

Town of Windsor, Broome County, New York
Local Law No. ____ of 2026

A LOCAL LAW AMENDING CHAPTER 93 (ZONING) BY ADDING A NEW ARTICLE XVIII ENTITLED “BATTERY ENERGY STORAGE SYSTEMS”

BE IT ENACTED by the Town Board of the Town of Windsor as follows:

SECTION 1. Title.

This Local Law No. ____ of the year 2026 shall be referred to as the “Battery Energy Storage Systems Local Law”.

SECTION 2. Authority.

This Local Law is adopted pursuant to the authority and provisions of Article IX, § 2(c) of the New York State Constitution, Section 10 of the Municipal Home Rule Law of the State of New York, and Sections 261-263 of the Town Law, which authorize the Town of Windsor (“Town”) to adopt land use provisions that advance and protect the health, safety and welfare of the community.

SECTION 3. Amendment.

The Zoning Ordinance of the Town of Windsor, New York (Chapter 93, Zoning) is hereby amended to add a new Article XVIII, entitled “Battery Energy Storage Systems”, as follows:

Article XVIII
Battery Energy Storage Systems

Section 93-130 – Statement of Purpose

This Article is adopted to advance and protect the public health, safety, welfare and quality of life of the Town of Windsor by creating regulations for the installation, operation, maintenance and decommissioning of battery energy storage systems (“BESS”), with the following objectives:

- A. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of BESS;
- B. To protect the health, welfare, safety, and quality of life of first responders and the general public;
- C. To ensure compatible land uses in the vicinity of the areas affected by BESS;
- D. To mitigate the impacts of BESS on environmental resources such as important agricultural lands, forests, wildlife and other protected resources;
- E. To require that all BESS be designed, constructed, operated and decommissioned in accordance with current nationally recognized fire safety and product safety standards, including NFPA 855 and UL 9540, and with emergency response planning appropriate to battery hazards, including thermal runaway; and

- F. To create synergy between BESS development and other goals of the Town Comprehensive Plan, including the orderly regulation of new energy generation and storage projects.

Section 93-131 – Word Usage and Definitions

For the purposes of this Article XVIII of this Ordinance, the defined terms, phrases, words, abbreviations and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words in the present tense include the future tense, and words used in the plural number include words in the singular number. The word “shall” is always mandatory and not merely directory.

ANSI – American National Standards Institute.

APPLICANT – Any individual, partnership, firm, corporation, limited liability company, trust, association, public utility, or other legal entity, or any authorized agent thereof, that submits an application for approval, permit, site plan approval, Special Use Permit, building permit, or other land-use authorization pursuant to this Article for the construction, operation, modification, expansion, or decommissioning of a BESS within the Town. The Applicant, Property Owner, and Developer shall be jointly and severally responsible for compliance with the provisions of this Article, including but not limited to conditions of approval, mitigation measures, maintenance, and decommissioning, unless otherwise expressly provided. The Applicant need not be the Property Owner, provided the Applicant demonstrates legal authority or written evidence of site control sufficient to seek the requested approvals.

BATTERY(IES) – A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this Article, batteries utilized in portable consumer products not permanently integrated into a structure’s electrical system are excluded from this definition.

BATTERY ENERGY STORAGE MANAGEMENT SYSTEM – An electronic system that protects storage batteries 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. The system generates an alarm and trouble signal for off-normal conditions.

BATTERY ENERGY STORAGE SYSTEM (BESS) – A system consisting of electrochemical storage batteries and one or more integrated or separate battery chargers, a battery energy storage management system, controls, power conditioning systems and associated electrical equipment, assembled and capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone twelve-volt car battery or an electric vehicle or its associated charging equipment. A BESS is classified as a Tier 1 or Tier 2 BESS as follows:

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

BATTERY ENERGY STORAGE SYSTEM (BESS) PERMIT – A permit issued by the Town of Windsor authorizing the installation of a BESS as provided in this Article.

BATTERY MONITORING SYSTEM (BMS) – Remote, continuous safety monitoring of a BESS.

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

COMMERCIAL BATTERY ENERGY STORAGE SYSTEM – A BESS that primarily stores and releases energy directly into the electric grid for off-site sale or consumption.

COMMISSIONING – A systematic process that provides documented confirmation that a BESS functions according to the intended design criteria and complies with applicable code requirements.

DEDICATED-USE BUILDING – A building that is built for the primary purpose of housing BESS equipment, is classified as Group F-1 occupancy as defined in the International Building Code, is constructed in accordance with the Uniform Code, and complies with the following: (1) the building's only permitted primary 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 BESS are limited to personnel that operate, maintain, service, test, and repair the BESS and other energy systems; and (4) administrative and support personnel are permitted in incidental-use areas within the building that do not contain BESS, provided that (a) such areas do not occupy more than ten percent (10%) of the building area of the story in which they are located, and (b) a means of egress is provided from the incidental-use areas to a public way that does not require occupants to traverse through areas containing BESS or other energy systems.

DEVELOPER – Any individual or legal entity that plans, finances, constructs, installs, owns, operates, or manages a BESS, or that controls the design, development, or implementation of such system, whether or not such entity is the Applicant or Property Owner.

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.

ENERGY STORAGE TECHNOLOGY – The specific electrochemical makeup of a BESS and the physical parameters of its charging and discharging system. Electric vehicles and associated charging equipment shall not be considered an energy storage technology for determining whether a BESS is a Tier 1 or Tier 2 system under this Article.

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.

HOST IMPACT PLAN – A plan in which the Developer identifies: (i) the short-term and long-term impacts of the proposed BESS on municipal services and community character; (ii) a detailed cost estimate for the construction of the BESS; (iii) based upon the detailed cost estimate, estimates of the annual Town (including special districts), County, and School real property taxes using the prior year's tax rates; (iv) whether the Developer will seek a PILOT agreement and, if so, the amounts being offered; (v) an evaluation of the impact to local roads and a road use mitigation plan (including county road and bridge use standards and overload policies); and (vi) the host

community benefit plan, if any, being proposed by the Developer to mitigate or prevent significant adverse impacts on the Town.

INTERNATIONAL BUILDING CODE (IBC) – The model building code published by the International Code Council, as currently in effect and as hereafter amended from time to time.

INTERNATIONAL FIRE CODE (IFC) – The model fire code published by the International Code Council, as currently in effect and as hereafter amended from time to time, which establishes minimum fire safety requirements for buildings, facilities, and processes, including the energy storage system provisions of IFC Section 1207 (requiring, among other things, UL 9540A or equivalent testing for BESS and, pursuant to IFC Section 1207.1.8.1, expert guidance to first responders, as recommended by the New York State Interagency Fire Safety Working Group).

KILOWATT (kW) – A unit of power equal to 1,000 watts.

KILOWATT HOUR (kWh) – A unit of energy equivalent to the energy transferred or expended in one hour by one kilowatt of power.

MEGAWATT (MW); MEGAWATT HOUR (MWh) – A unit of power equal to 1,000 kW; a unit of energy equivalent to the energy transferred or expended in one hour by one megawatt of power.

NAMEPLATE CAPACITY – The maximum electric power output under optimal operating conditions, which may be expressed in terms of alternating current (AC) or direct current (DC).

NATIONAL ELECTRICAL CODE (NEC) – NFPA 70, the set of guidelines and regulations governing the safe design and installation of electrical systems in the United States, 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 Occupational Safety and Health Administration electrical standards.

NFPA – The National Fire Protection Association, an organization that develops and publishes codes and standards for fire, electrical and building safety.

NFPA 855 – NFPA 855, Standard for the Installation of Stationary Energy Storage Systems, in the edition currently in effect and as hereafter amended from time to time.

NONCOMMERCIAL BATTERY ENERGY STORAGE SYSTEM – A BESS that is incidental and subordinate to another non-energy related use on the same parcel and which exclusively stores energy for on-site consumption.

NON-DEDICATED-USE BUILDING – Any building that contains a BESS and does 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, or 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 BESS host lot or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the Property Owner from the BESS Developer (or affiliate), regardless of whether any part of a BESS is constructed on such property.

PROPERTY OWNER – The individual or legal entity holding fee title ownership of record to the parcel or parcels on which a BESS is proposed or located, as shown by the most recent deed filed with the Broome County Clerk. Where multiple owners exist, all such owners shall be considered Property Owners for purposes of this Article. Nothing herein shall relieve the Property Owner of responsibility for compliance with this Article unless expressly stated otherwise.

RESIDENTIAL DWELLING; RESIDENTIAL PROPERTY – A building containing a dwelling unit used for or intended to be used for residential occupancy; any lot which contains a residential dwelling.

SPECIAL FLOOD HAZARD AREA (SFHA) – The land area covered by the floodwaters of the base flood as shown on National Flood Insurance Program (NFIP) maps, including preliminary mapping where available. The SFHA is the area where the NFIP's floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies.

THERMAL RUNAWAY – The condition in which a battery cell undergoes an uncontrolled, self-sustaining exothermic reaction resulting in rapid temperature increase and the release of flammable and toxic gases, which may propagate to adjacent cells and result in fire or explosion.

UL – Underwriters Laboratories, an accredited standards developer in the United States.

UL 9540 – UL 9540, Standard for Energy Storage Systems and Equipment, as amended, or an approved equivalent.

UL 9540A – ANSI/UL 9540A, Standard for Test Method for Evaluating Thermal Runaway Fire Propagation in Battery Energy Storage Systems, as amended, which determines the capability of a system to undergo thermal runaway and evaluates fire and explosion hazard characteristics, and enables manufacturers and designers to implement design measures, separation distances, ventilation and explosion control necessary to improve safety.

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 93-132 – Applicability

- A. The requirements of this Article shall apply to all BESS proposed, permitted, installed, or modified in the Town of Windsor after the effective date of this Article, excluding general maintenance and repair.
- B. BESS constructed or installed, or possessing all required local approvals, including a building permit, prior to the effective date of this Article shall not be required to meet the

requirements of this Article unless they are substantially modified or otherwise become subject to a discretionary decision of any board or officer of the Town.

- C. Modifications to, retrofits of, or replacements of an existing BESS that increase the total BESS designed discharge duration or power rating shall be subject to the requirements of this Article.
- D. Nothing in this Article shall be construed to amend, repeal or supersede Section 93-113(B) of Article XVII of this Chapter, which provides that permitted commercial solar energy systems shall not incorporate battery storage or a battery storage system. Any BESS proposed on the same parcel as, or in the vicinity of, a solar energy system shall require all approvals required by this Article, independent of any approvals issued under Article XVII.

Section 93-133 – Tier 1 Battery Energy Storage Systems

- A. Tier 1 BESS shall be permitted in all zoning districts as an accessory use, subject to the Uniform Code, and shall require a BESS Permit, a building permit and an electrical permit, each issued by the Town Code Enforcement Officer. Tier 1 BESS shall be exempt from site plan review and from discretionary review by the Planning Board.
- B. All Tier 1 BESS shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 and shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, the Energy Code, and the codes, regulations, and industry standards referenced therein, including applicable aggregate energy capacity limitations for the location of installation (including, without limitation, limitations applicable to utility closets and storage or utility spaces, attached or detached garages and detached accessory structures, exterior walls, and outdoor ground installations).
- C. No outdoor Tier 1 BESS with an aggregate energy capacity greater than eighty (80) kWh shall be installed in a front yard. Such systems shall comply with the principal structure setback requirements of the underlying zoning district, shall not be located closer than one hundred (100) feet to the property line of any lot that is used or zoned for residential purposes, and shall be screened from adjacent properties to the reasonable satisfaction of the Code Enforcement Officer.

Section 93-134 – Tier 2 Battery Energy Storage Systems: Special Use Permit and Site Plan Approval Required

- A. Tier 2 BESS are permitted in all zoning districts within the Town only upon the granting of site plan approval, a Special Use Permit, and a BESS Permit by the Planning Board in accordance with this Article. Notwithstanding the provisions of Chapter 93, Article XI (“Special Use Permits”) of this Ordinance, this Section and Sections 93-135 through 93-137 shall govern the requirements for and consideration of all Special Use Permit applications for Tier 2 BESS.
- B. The Planning Board is hereby designated and authorized to review, analyze, evaluate and make decisions with respect to all site plan and Special Use Permit applications for Tier 2 BESS. In so doing, the Planning Board may approve, approve with conditions, disapprove, recertify, not recertify or revoke any such approval. The Planning Board may, at its discretion, delegate or designate other officials of the Town to accept, review, analyze,

evaluate and make recommendations to the Planning Board with respect to such applications.

- C. No Tier 2 BESS shall be installed or constructed until the site plan is reviewed and approved by the Planning Board, a Special Use Permit and BESS Permit have been issued by the Planning Board, all agreements required by Section 93-141 have been executed (unless waived by resolution of the Town Board), and a building permit and electrical permit have been issued.
- D. Pre-Application Conference. At least sixty (60) days prior to submission of an application, the Applicant shall conduct a pre-application meeting with the Town Supervisor, Town Engineer, Code Enforcement Officer and/or Planning Board Chair, as the Town may direct, to ensure all parties have clear expectations regarding the requirements applicable to the application. A written request for this purpose shall be sent to the Town Supervisor and the Planning Board. At the pre-application meeting, the Applicant shall provide:
 - 1. A brief description of the proposed BESS, its aggregate energy capacity and energy storage technology, and its environmental setting;
 - 2. A map of the BESS facility showing project components;
 - 3. The proposed BESS's anticipated impacts;
 - 4. A designated contact person with mailing address, telephone number and email address from whom information will be available going forward;
 - 5. An anticipated submission date; and
 - 6. The application fee.
- E. Coordinated Submission; SEQRA. The Applicant shall submit the site plan materials and the Special Use Permit application concurrently as a single coordinated submission, and the Planning Board shall review the project as a whole action for purposes of the State Environmental Quality Review Act ("SEQRA"), Article 8 of the Environmental Conservation Law and its implementing regulations at 6 NYCRR Part 617. The Planning Board shall serve as Lead Agency under SEQRA for all actions, permits, approvals, and site plan reviews required under this Article, unless another agency with jurisdiction is designated as Lead Agency in accordance with 6 NYCRR Part 617.
- F. Completeness. Applications shall be reviewed by the Planning Board for completeness. An application shall be complete when it addresses all matters listed in this Article and the requirements of SEQRA have been satisfied for an Unlisted or Type I action (e.g., a negative declaration or a Final Environmental Impact Statement and SEQRA findings). Applicants shall be advised in writing of the completeness of their application or of any deficiencies that must be addressed prior to substantive review. Incomplete applications may be rejected by the Planning Board.
- G. Public Hearing. The Planning Board shall hold a public hearing on each application for a Special Use Permit for a Tier 2 BESS and shall provide notice as required by law and this Ordinance. The Planning Board shall have a notice printed in a newspaper of general circulation in the Town, at the Applicant's expense, at least five (5) days in advance of such hearing. The Applicant shall mail notice of the public hearing by first-class mail to all adjoining landowners and landowners owning property within five hundred (500) feet of

the project property boundary at least ten (10) days prior to such hearing. Proof of mailing shall be provided to the Planning Board at or before the public hearing.

- H. County Referral. Any application requiring County Planning review shall be referred pursuant to General Municipal Law § 239-m, as applicable, prior to final action, together with notice of the public hearing.
- I. Decision. Upon closing of the public hearing, the Planning Board shall take action on the application within sixty-two (62) days, which can include approval, approval with conditions, or denial. The sixty-two (62) day period may be extended upon consent by both the Planning Board and the Applicant. No application for a Special Use Permit for a Tier 2 BESS shall be finally acted upon unless and until final site plan approval has been granted by the Planning Board.
- J. The Special Use Permit application shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. If the landowner(s) of the project location is not the Applicant, the Applicant shall additionally provide either (1) a signed writing from each landowner consenting to the filing of the application by the Applicant, or (2) a copy of the agreement(s) between the Applicant and each landowner authorizing the Applicant to use the landowner's property as proposed in the application.
- K. The application shall include a statement in writing: (1) that the Applicant's proposed BESS shall be maintained in a safe manner and in compliance with all conditions of the site plan approval and Special Use Permit, without exception, unless specifically granted relief by the Planning Board in writing, as well as all applicable and permissible local codes, ordinances and regulations, including any and all applicable county, state and federal laws, rules and regulations; and (2) that the construction of the proposed BESS is legally permissible, including but not limited to the fact that the Applicant is authorized to do business in New York State.
- L. At the discretion of the Planning Board, any false or misleading statement in the application may subject the Applicant to denial of the application without further consideration or opportunity for correction.
- M. Variances. Except as otherwise expressly provided in this Article, any request for relief from the dimensional, bulk, use, or other zoning requirements of this Article XVIII shall be made to the Zoning Board of Appeals in accordance with Article XVI of this Chapter and New York Town Law § 267-b. No variance granted by the Zoning Board of Appeals shall relieve an Applicant of the obligation to obtain site plan approval, Special Use Permit approval, or compliance with SEQRA as required under this Article.

Section 93-135 – Special Use Permit and Site Plan Application Requirements for Tier 2 Battery Energy Storage Systems

All Special Use Permit and site plan applications for proposed Tier 2 BESS shall show and include a site plan with maps, drawings and any and all necessary supplemental reports and documentation that show and include the following:

- A. Names, mailing addresses, email addresses and telephone numbers of: (1) the Applicant and, if the application is made on behalf of a business entity, the entity's authorized agent(s)

responsible for the application; (2) the owner(s) of the proposed project site; (3) the Developer of the proposed project; and (4) the operator of the proposed project.

- B. Name of project, Tax Map parcel numbers and boundary lines of parcel(s) on which the project will be located, zoning district(s) in which said parcels are situated, a location map showing the proposed site's location, north arrow, and scale of the plan.
- C. Application fee (non-refundable) in an amount to be set by the Town Board by resolution, together with the escrow deposit required by Section 93-143.
- D. Stamped drawings to scale, signed and sealed by a New York State Licensed Professional Engineer or Registered Architect, showing: (1) the layout of the proposed BESS, including all enclosures, containers, equipment pads, inverters, transformers and interconnection equipment; (2) a survey of the property or properties; (3) the location of all lot lines, easements and rights-of-way; (4) the location of all current and proposed utility connections, transmission lines and accessory facilities and structures; (5) existing and proposed topography at five-foot contour intervals; (6) the location of all proposed landscaping and screening per the landscaping and screening plan; and (7) proposed road and emergency access to the project site, including provisions for paving, if any. The stamped drawings shall also depict, where present, regulated wetlands and watercourses, FEMA Special Flood Hazard Areas, and areas mapped by the Natural Resources Conservation Service (NRCS) as Prime Farmland and/or Farmland of Statewide Importance within the parcel(s).
- E. A map or maps showing the location and distance of the BESS and associated accessory facilities and structures to: (1) the nearest non-participating residential property line; (2) the nearest non-participating residential dwelling; (3) the nearest non-participating, non-residential property line; (4) the nearest Occupied Community Building; and (5) the nearest public road. The map(s) shall also show the location, size and height of all existing and proposed structures on the property, and the names, addresses and Tax Map parcel numbers of all owners of record of abutting parcels and those within fifteen hundred (1,500) feet of the property lines of the parcel(s) where development is proposed, with each such owner designated as "participating" or "non-participating".
- F. A one- or three-line electrical diagram detailing the BESS layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices.
- G. A preliminary equipment specification sheet that documents the proposed BESS components, energy storage technology, aggregate energy capacity (kWh), nameplate capacity, inverters and associated electrical equipment to be installed. A final equipment specification sheet shall be submitted prior to the issuance of a building permit.
- H. Documentation of listing of the BESS to UL 9540 by a Nationally Recognized Testing Laboratory, together with UL 9540A test data (at the cell, module, unit or installation level, as applicable) and the manufacturer's resulting guidance regarding separation distances, ventilation, deflagration venting and explosion control, sufficient to demonstrate compliance with NFPA 855 and Section 93-138.

- I. Name, address, and contact information of the proposed or potential system installer and the owner/operator of the BESS. Final system installer information shall be submitted prior to the issuance of a building permit.
- J. Name, address, phone number, and signature of the Applicant, as well as all Property Owners, demonstrating their consent to the application and the use of the property for the BESS.
- K. A Fire Safety Compliance Plan in conformance with Section 93-138(B).
- L. An Emergency Operations Plan in conformance with Section 93-138(C).
- M. A Commissioning Plan in conformance with Section 93-138(J).
- N. An Operation and Maintenance Plan in conformance with Section 93-139.
- O. A Decommissioning Plan in conformance with Section 93-146, together with a proposed Decommissioning Agreement.
- P. A Host Impact Plan.
- Q. A Visual Impact Assessment (“VIA”), in a manner approved by the Planning Board, which shall at minimum include: (1) a zone of visibility map and line-of-sight profile analysis to determine locations from which the BESS may be seen; (2) pictorial representations or photographic simulations of before-and-after views from key viewpoints, including public roads and nearby residences, with visual conditions shown with proposed landscaping and screening at installation, at the two-year anniversary after installation, and at the five-year anniversary after installation, and including an evaluation of visibility under both leaf-on and leaf-off conditions; and (3) a visual impact minimization and mitigation plan responding to any concerns raised by the VIA, including screening, berming, facility color and design, relocation or rearrangement of components, and lighting options.
- R. A noise analysis, prepared in a commercially reasonable manner, evaluating potential off-site sound impacts of the BESS, its components and associated ancillary equipment at non-participating residences and Occupied Community Buildings, including equipment and component manufacturers’ noise ratings and any proposed mitigation measures, demonstrating compliance with Section 93-137(G).
- S. Documentation of the proposed electrical interconnection, including the planned point of interconnection and the status of the interconnection application or approval, or a copy of the executed interconnection agreement if available.
- T. Erosion and sediment control and stormwater management plans, including a Stormwater Pollution Prevention Plan (SWPPP) where disturbance exceeds one acre, prepared to New York State Department of Environmental Conservation standards and to such standards as may reasonably be established by the Planning Board.
- U. A completed SEQRA Full Environmental Assessment Form (“FEAF”).

The Planning Board may, in its discretion, modify or waive any of the requirements described in this Section to the extent that such requirements are inapplicable to a given application. The Planning Board may also require that the Applicant submit additional information not listed herein that it deems reasonably necessary in order to inform and complete its review of the application.

Prior to the issuance of a building permit, all engineering documents must be signed and sealed by a New York State Licensed Professional Engineer.

Section 93-136 – Planning Board Findings

Prior to granting a Special Use Permit and site plan approval for a Tier 2 BESS, the Planning Board shall find that:

- A. The application complies with the standards of this Article and all applicable provisions of the Uniform Code, the Energy Code, and the codes, regulations and industry standards referenced therein;
- B. The BESS and its equipment are certified in accordance with Section 93-138(A) and the design incorporates the separation distances, ventilation, deflagration venting and explosion control supported by the applicable UL 9540A test data and NFPA 855;
- C. Adequate emergency access, fire protection and emergency response capability exist or will be provided, based upon consultation with the chief(s) of the fire companies serving the Town of Windsor and any other emergency services provider serving the site;
- D. The BESS does not present any unreasonable risk to the health or safety of residents, neighboring properties, or first responders, including risks associated with thermal runaway, fire, explosion, or the release of liquids, vapors or contaminated fire-suppression water;
- E. Visual, noise and environmental impacts have been avoided, minimized or mitigated to the maximum extent practicable;
- F. The project is consistent with the Town Comprehensive Plan and the character of the surrounding area; and
- G. All financial security, insurance and agreements required by this Article have been provided or will be provided prior to the issuance of a building permit.

Section 93-137 – Tier 2 Battery Energy Storage Systems: Technical Standards

- A. Siting; Floodplains; Agricultural Lands. No BESS shall be located or installed within a Special Flood Hazard Area, even if placed on elevated pads. Siting of Tier 2 BESS shall avoid Prime Farmland and Farmland of Statewide Importance to the maximum extent practicable, and any construction on active agricultural land shall comply with the applicable construction-mitigation guidelines of the New York State Department of Agriculture and Markets, as amended.
- B. Setbacks. Tier 2 BESS shall meet the setback requirements set forth in Table 1 of this Article, unless a variance is granted pursuant to Section 93-134(M). Setbacks shall be measured from the nearest BESS component, enclosure or item of associated equipment. Tier 2 BESS shall not be placed in a front yard. Access roads providing access or egress to a public road shall be excluded from the setback requirements. Security fencing may be located within the required setback but shall be no closer than fifty (50) feet to any public road or non-participating property line. Individual BESS units, containers or enclosures shall be separated from one another by not less than ten (10) feet or such greater separation as is required by NFPA 855 or supported by the applicable UL 9540A test data, whichever

is greater. The Planning Board may require that setbacks be increased to accommodate required screening or emergency access.

Table 1: Setback Requirements for Tier 2 Battery Energy Storage Systems

Measured To	Minimum Setback
Non-participating residential dwelling	1,000 feet
Occupied Community Building; school; place of worship; public park or playground; public library; place of public assembly designed for, or regularly engaged in, the simultaneous use of 100 persons or more	1,000 feet
Municipal property, including the Town Hall, Town Highway Department facilities, fire department facilities, Town parks and Town cemeteries	1,000 feet
Non-participating property line – systems less than 5,000 kWh	125 feet
Non-participating property line – systems 5,000 kWh or greater	300 feet
Public road or street boundary line	100 feet
Separation between individual BESS units, containers or enclosures	10 feet, or greater where required by NFPA 855 or UL 9540A test data

- C. Height. Tier 2 BESS shall not exceed fifteen (15) feet in height, unless housed within a larger structure containing a principal use permitted in the underlying zoning district.
- D. Fencing. Tier 2 BESS, including all mechanical equipment, shall be enclosed by a fence not less than seven (7) feet in height with a self-locking gate to prevent unauthorized access, unless housed in a Dedicated-Use Building. Fencing shall not interfere with ventilation or exhaust ports. The type and design of fencing shall be subject to the approval of the Planning Board. Gates shall be equipped with Knox Company locks or an equivalent key-access system in accordance with Section 93-138(F).
- E. Screening and Landscaping. Tier 2 BESS shall be fully screened from adjacent residential properties and from streets or roads on which the facility fronts or from which it is visible, and views from adjacent commercial properties shall be minimized to the extent reasonably practicable. Screening and buffering may be accomplished using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and that do not interfere with ventilation or exhaust ports. Where landscaping is used, the Developer shall plant with low-growing, non-invasive species (pollinator-friendly species are encouraged), and shall maintain all screening and landscaping for the life of the project. The species, type, location and planted height of such landscaping and fencing shall be subject to the approval of the Planning Board.

- F. Lighting. Exterior lighting shall be limited to that required for health, safety, security, emergency and operational purposes and shall be specified to avoid off-site lighting effects to the greatest extent practicable. All lighting shall utilize fully shielded (full cut-off) fixtures to prevent up-light and glare, shall be downcast from abutting properties, and shall employ bulbs with a correlated color temperature (CCT) not exceeding 3,000 Kelvin to minimize blue-light emission and visual intrusion. Maximum mounting height shall be twenty (20) feet above grade for pole-mounted fixtures, or fifteen (15) feet when adjacent to residential or scenic areas. Lighting controls, including timers, dimmers or motion sensors, shall be used wherever practicable to reduce lighting intensity and duration.
- G. Noise. The one-hour average noise generated from the BESS, its components and associated ancillary equipment shall not exceed a noise level of forty-five (45) dBA as measured at the outside wall of any non-participating residence or Occupied Community Building. Applicants may submit equipment and component manufacturers' noise ratings to demonstrate compliance. The Planning Board may, as a condition of approval, require the Applicant to provide operating sound pressure level measurements from a reasonable number of sampled locations at the perimeter of the BESS to verify compliance with this standard.
- H. Utility Lines and Electrical Circuitry. All on-site utility lines installed as part of a Tier 2 BESS shall be placed underground to the maximum 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 rights-of-way. All electrical installations shall comply with the National Electrical Code and the National Electrical Safety Code, as applicable.
- I. Vegetation Management. Land areas within a minimum of ten (10) feet on each side of a Tier 2 BESS, or such greater distance as may be required by NFPA 855, the Fire Code or the Planning Board, shall be cleared of combustible vegetation and other combustible growth, and such clearance shall be maintained throughout the life of the BESS. 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 such specimens do not form a means of readily transmitting fire. Removal of trees and native vegetation outside required clearance areas shall be minimized to the extent practicable.
- J. Emergency Access. At least one access road and adequate parking shall be provided to assure adequate emergency and service access. Access roads and emergency access ways shall be designed to minimize the extent of impervious materials and soil compaction; shall be capable of bearing the weight of emergency vehicles; and shall be sufficiently wide to permit access by emergency vehicles such as fire trucks and ambulances so that emergency vehicles may pass each other without leaving the road. Dead-end access roads exceeding one hundred fifty (150) feet in length shall provide a turnaround suitable for fire apparatus, such as a T-turn or cul-de-sac, with dimensions required by the International Fire Code or NFPA standards, or as may otherwise be required by applicable laws and regulations. Fire access roads and access for fire apparatus shall be approved by the chief(s) of the fire companies serving the Town of Windsor and the Planning Board. The Developer, and its successors and assigns, shall be responsible for keeping all access roads clear and passable by emergency equipment at all times, including snow removal any time accumulation

exceeds three (3) inches, at a level acceptable to the fire company and, if the BESS is located in an ambulance district, the local ambulance provider.

- K. Signage. Signage shall be in compliance with ANSI Z535, as amended, or the then-current safety standard, and shall include the type of technology associated with the BESS, any special hazards associated therewith, the type of suppression system installed in the area of the BESS, and twenty-four-hour emergency contact information, including a reach-back phone number. As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light-reflective surface, and a clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations. A site map placard shall be posted near the main access gate identifying battery arrays, fire suppression systems, disconnects, and fire access points.
- L. Erosion and Sediment Control During Construction. In addition to any SWPPP required under the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, construction shall be phased and staged so as to minimize concurrent disturbed areas; temporary stabilization shall be provided within fourteen (14) days of the cessation of earthwork in any area (or such shorter timeline as required by the applicable SPDES General Permit), with final stabilization promptly upon completion; and all erosion and sediment control practices shall conform to the New York State Standards and Specifications for Erosion and Sediment Control, as amended. Upon completion, a New York State Licensed Professional Engineer shall certify that final stabilization has been achieved and that permanent stormwater practices were constructed in accordance with the approved plans.

Section 93-138 – Fire Safety and Emergency Preparedness

- A. System Certification. BESS and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (or an approved equivalent), with subcomponents meeting each of the following standards, as applicable, prior to operation: (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); and (3) UL 1741 or UL 62109 (inverters and power converters). All BESS shall be designed, installed, operated and maintained in compliance with NFPA 855, the Uniform Code (including the Fire Code), and, where more stringent and not inconsistent with the Uniform Code, the energy storage system provisions of the International Fire Code, including Section 1207, and shall be certified under the applicable electrical, building, and fire prevention codes as required. UL 9540A (or equivalent) test data shall be provided demonstrating the thermal runaway and fire propagation characteristics of the system and supporting the design of separation distances, ventilation, deflagration venting and explosion control. Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 (or an approved equivalent) and applicable codes, regulations and safety standards may be used to meet system certification requirements.
- B. Fire Safety Compliance Plan. All Tier 2 BESS applications require submission of a Fire Safety Compliance Plan at the time of application. The plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code, NFPA 855 and this Article, shall incorporate the applicable UL 9540A test data and resulting design measures, and shall include response considerations similar to

those found in a safety data sheet that address response safety concerns and extinguishment. The plan shall be subject to the approval of the Code Enforcement Officer in consultation with the fire company, and, prior to the issuance of a building permit, the Code Enforcement Officer shall document and verify such compliance. The Fire Safety Compliance Plan shall be updated by the owner or operator, for review and approval by the Planning Board, every five (5) years after project approval, throughout the life of operation.

C. Emergency Operations Plan. All Tier 2 BESS applications require submission of an Emergency Operations Plan to the Code Enforcement Officer for approval, and a final Emergency Operations Plan must be approved prior to the issuance of a building permit. The Emergency Operations Plan shall include the following information:

1. Procedures for safe shutdown, de-energizing, or air-gap 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;
2. Procedures for inspection and testing of associated alarms, interlocks, and controls;
3. Procedures to be followed in response to notifications from the battery energy storage management system, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed-upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure;
4. Emergency procedures to be followed in case of fire, explosion, thermal runaway, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions, including sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire, all in accordance with applicable local, state and national codes;
5. Procedures for the management and containment of fire-suppression water and other runoff to prevent contamination of groundwater and surface water;
6. Procedures for dealing with BESS equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged BESS equipment from the facility;
7. A complete listing, and the on-site location, of safety data sheets, together with response considerations similar to a safety data sheet where an SDS is not required;
8. Plans for maintaining cybersecurity of the system and preventing unauthorized electronic or virtual access, and an incident response plan consistent with best practices in the industry;
9. A requirement that the property be inspected promptly after a National Weather Service designation of a severe weather event to ensure that the property did not sustain damage, with reports of said inspection filed with the Code Enforcement Officer;

10. 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, in accordance with subsection D of this Section; and

11. Other procedures as identified by the Planning Board to provide for the safety of occupants, neighboring properties, residents and emergency responders.

A copy of the approved Emergency Operations Plan shall be given to the system owner, all fire companies serving the Town of Windsor, and the local fire code official. A permanent copy shall also be placed in an approved location accessible to facility personnel, fire code officials, and emergency responders.

- D. First Responder Training. Site-specific training of local first responders shall be conducted by a qualified instructor bi-annually, with classroom training to be completed in the winter and on-site training in the spring, and shall include local and mutual aid first responders. Initial site-specific training shall occur no later than the commencement of commercial operation, and training shall be updated whenever changes occur that could impact the emergency response plan. Any costs incurred in providing necessary training and equipment for first responders required to support the construction and operation of a BESS, including any state- or federally-required training, shall be paid or reimbursed by the owner or Applicant upon the Town's submission of documentation of such costs.
- E. Emergency Equipment. Any required fire suppression equipment or emergency equipment reasonably needed by the fire company or other emergency services provider to respond to a project emergency shall be provided at the Developer's expense. The reasonableness of such equipment shall be determined by the Town upon the advice of relevant firefighting personnel or industry experts.
- F. Knox Box. A Knox Box or other secure key-access system accessible by the fire company shall be installed, in a location subject to approval by the Fire Chief, containing keys to access the structure or enclosure, emergency contact information, and the current Emergency Operations Plan.
- G. Monitoring and Detection. All Tier 2 BESS shall be equipped with a battery energy storage management system providing twenty-four-hour, seven-day remote monitoring, and with early-warning detection systems for thermal runaway, off-gassing, arc flash, and loss of electrical power to the facility, connected to a 24/7 monitored alarm system that alerts the local fire department(s). Clearly marked emergency air-gap disconnect switches shall be accessible from outside the enclosure.
- H. Explosion Control. Where required by NFPA 855 or indicated by the applicable UL 9540A test data, BESS enclosures shall be provided with deflagration venting in accordance with NFPA 68 or an explosion prevention system in accordance with NFPA 69.
- I. Emergency Power. BESS shall be installed with all reasonable emergency power supply or safeguards to ensure that, in the event of a power outage, all emergency response equipment and safety, alarm and monitoring systems remain fully operational for no less than seventy-two (72) hours. In the event of a power grid failure, the backup power system shall automatically activate within thirty (30) seconds.
- J. Commissioning. A Commissioning Plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per the

requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, commissioning shall be conducted by an independent third-party New York State 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, including the results of the initial acceptance testing required in the Uniform Code, shall be provided to the Code Enforcement Officer prior to final inspection and approval and maintained at an approved on-site location. Energy storage system commissioning shall not be required for lead-acid and nickel-cadmium battery systems at facilities under the exclusive control of communications utilities that comply with NFPA 76 and operate at less than fifty (50) VAC and sixty (60) VDC.

- K. Working Space Clearances. BESS, 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.
- L. Additional Safety Protocols. The Planning Board may determine, on a case-by-case basis, that additional safety submissions and/or reasonable conditions of approval are required to ensure the safety of occupants, neighboring properties, and emergency responders.

Section 93-139 – Operation and Maintenance

- A. All Tier 2 BESS shall be operated and maintained in accordance with an Operation and Maintenance Plan approved by the Planning Board. Such plan shall describe continuing BESS 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. Compliance with the Operation and Maintenance Plan shall be a condition of approval.
- B. The BESS and the site shall be maintained in good working order and in accordance with industry standards, including maintenance of vegetation to prevent overgrowth that could pose a fire hazard, without maintenance practices that lead to excessive soil disturbance or erosion.
- C. Annual Inspection. All Tier 2 BESS shall undergo an annual inspection by an appropriately qualified independent third party, and the Developer shall provide a report of such inspection to the Town within thirty (30) days of such inspection.
- D. Incident Reporting. The owner or operator shall notify the Code Enforcement Officer and the fire company of any fire, thermal runaway event, off-gassing event, explosion, or activation of the emergency alarm or suppression systems within twenty-four (24) hours of the event, and shall provide a written incident report, including root-cause analysis and corrective measures, within thirty (30) days.

Section 93-140 – Right to Inspect; Site Access

- A. In order to verify that the Applicant and any and all lessees, renters and/or licensees of a BESS place, construct, modify and maintain the BESS in accordance with all applicable

technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town, its authorized officers, agents and/or designees may, upon reasonable notice, inspect all facets of said BESS's placement, construction, modification and maintenance. The Town may inspect the facility at least annually and after any complaint or observed issue.

- B. The costs of all inspections conducted pursuant to this Section, including any inspections required by the Town that are beyond the scope or ability of the Code Enforcement Officer and that are performed by a qualified third party retained by the Town, shall be borne by the Applicant.
- C. Upon request of the Town, the owner of the BESS shall provide the Code Enforcement Officer with maintenance and inspection records and a report of the system's operational status. The report shall be submitted no later than forty-five (45) days after a written request. Failure to submit a report as required herein shall be considered a violation of this Article, subject to the penalties and remedies set forth herein.

Section 93-141 – Contractual Agreements Required

The Planning Board may grant site plan approval and/or a Special Use Permit for a Tier 2 BESS without requiring the prior execution of the agreements set forth in this Section. However, no building permit shall be issued, and no construction shall commence, until all required agreements have been fully executed and approved by the Town Board, unless expressly waived by resolution of the Town Board. The Town Board's approval of agreements under this Section is contractual in nature and shall not constitute land use approval.

- A. The Applicant for a Tier 2 BESS shall execute the following agreements with the Town, unless waived in whole or in part by resolution of the Town Board based upon applicability:
 - 1. Payment in Lieu of Taxes (PILOT) Agreement, if applicable, pursuant to Section 93-142 of this Article and Real Property Tax Law § 487;
 - 2. Road Use Agreement, where Town roads are proposed to be used for construction, operation or decommissioning of the project, in accordance with subsection B of this Section;
 - 3. Indemnification Agreement, requiring the Applicant, owner and operator to defend, indemnify and hold harmless the Town, its officers, officials, boards, employees, attorneys, agents and consultants from all claims, damages, penalties, costs and expenses (including reasonable attorneys', consultants' and expert witness fees) arising out of the placement, construction, operation, maintenance, modification, repair, replacement, removal or restoration of the BESS, except to the extent caused by the negligent or intentional acts or omissions of the Town;
 - 4. Host Community Agreement, providing a public benefit payment to mitigate additional municipal impacts associated with the project, informed by the Host Impact Plan, in an amount and on terms approved by resolution of the Town Board; and
 - 5. Decommissioning Agreement, in accordance with Section 93-146.

- B. Road Use Agreement. Prior to construction of a Tier 2 BESS, where Town roads will be used, the Developer shall execute a Road Use Agreement for Town roads with the Town, subject to the approval of the Town Highway Superintendent, identifying haul routes along Town roads, posting a road repair bond, and completing pre- and post-construction condition surveys of such Town roads. The minimum amount of such repair bond shall be \$6,000.00 for dirt roads, \$12,500.00 per mile for paved roads, and \$50,000.00 for any road that the Town will allow to be degraded below its original condition until hauling is completed. During construction, roads shall be continuously maintained for safe public use as determined by the Highway Superintendent, and the Developer shall restore all Town roads to equal or better condition at no cost to the Town. The Developer shall inform local residents by mail or in person of impending construction and delays no less than two (2) weeks prior to beginning construction. The Road Use Agreement shall provide that all site preparation, construction, and delivery activities shall be limited to Monday through Friday between the hours of 8:00 a.m. and 6:00 p.m.; that no construction activities, including the idling of heavy equipment, shall occur on Saturdays, Sundays, or federal holidays; and that high-impact noise activities, such as pile driving or rock hammering, shall be further restricted to between 9:00 a.m. and 5:00 p.m.

Failure to timely execute any required agreement shall constitute grounds for the denial or suspension of a building permit, issuance of a stop-work order, or revocation of approvals in accordance with this Article.

Section 93-142 – Payment in Lieu of Taxes (PILOT)

- A. Pursuant to Real Property Tax Law § 487(9)(b), the Town of Windsor hereby declares its intent to require a PILOT agreement for all energy storage systems that qualify for a real property tax exemption under Real Property Tax Law § 487. This Article shall serve as written notice of such requirement pursuant to Real Property Tax Law § 487(9)(a).
- B. The owner of real property on which a Tier 2 BESS is located shall enter into a PILOT agreement with the Town, except for BESS that do not seek or qualify for a real property tax exemption under Real Property Tax Law § 487. A lessee or licensee controlling the BESS may enter into the PILOT agreement on behalf of the Property Owner.
- C. Each PILOT agreement shall include, at minimum: (1) owner and operator identification and contact information; (2) the tax map parcel numbers affected; (3) a term of fifteen (15) years; (4) installed capacity and pro-rata adjustment provisions, including a requirement that if capacity is increased as a result of a system upgrade, replacement, reprogramming or repowering of equipment, the annual payments shall be increased on a pro-rata basis for the remaining years of the agreement; (5) acknowledgment of tax-exempt status pursuant to Real Property Tax Law § 487; (6) assignment provisions requiring Town consent, except for financing-related assignments; (7) payment amounts and escalation, which may be established by Town Board resolution or delegated to the Broome County Industrial Development Agency; and (8) remedies for nonpayment, including cancellation of the PILOT agreement and restoration of full taxation upon failure to cure within thirty (30) days.
- D. Nothing herein shall exempt any Applicant from compliance with applicable state or local codes, nor authorize installation of a BESS without all required approvals. Any amounts

paid under a Host Community Agreement shall be distinct from any real property tax or payment in lieu thereof.

Section 93-143 – Retention of Expert Assistance; Reimbursement by Applicant

- A. The Applicant for a Special Use Permit for a Tier 2 BESS shall be responsible for the cost of the engineering review by the Town Designated Engineer, as well as any additional consultants and/or experts the Town may hire to assist in the review and evaluation of the application, including legal, environmental, fire-safety and planning consultants, and any request for recertification of a previously issued Special Use Permit. Reimbursable costs may include reasonable review and inspection services during construction, operation, and decommissioning of the BESS, including final restoration inspection.
- B. An Applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of such evaluation and consultation in connection with the review of any application. The initial deposit shall be no less than \$15,000. These funds shall accompany the filing of an application, and the Town will maintain a separate escrow account for all such funds. The Town's consultants and experts shall bill or invoice the Town no more frequently than monthly. If at any time during the review process the escrow account has a balance less than 50% of the initially deposited amount, the Applicant shall immediately, upon notification by the Town, replenish said account so that the balance equals the amount of the initial deposit. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application, and the Planning Board may suspend review of the application until such amounts are paid. In no event shall any BESS application be approved until such expenses have been paid in full. In the event that the amount held in escrow is more than the amount of the actual billing or invoicing at the conclusion of the review process, the difference shall be promptly refunded to the Applicant.

Section 93-144 – Related Permits and Adherence to Codes

- A. A holder of a Special Use Permit granted under this Article shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code and must maintain the same in full force and effect for as long as required by the Town or other governmental entity or agency having jurisdiction.
- B. A holder of a Special Use Permit granted under this Article shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted BESS in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, County, State and/or United States, including, but not limited to, the most recent editions of the New York State Uniform Fire Prevention and Building Code, the State Energy Conservation Construction Code, the National Electrical Safety Code, the National Electrical Code, NFPA 855, and, where applicable, the energy storage system provisions of the International Fire Code, as well as accepted and responsible workmanlike industry practices and recommended practices. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

Section 93-145 – Liability Insurance

- A. Prior to the issuance of a building permit for construction of a Tier 2 BESS, the owner/operator shall secure, and shall at all times maintain for the duration of construction and the life of the BESS (and, in the case of pollution liability coverage, for a minimum of five (5) years following decommissioning), the following insurance:
1. Commercial general liability insurance covering personal injuries, death, pollution and property damage of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate, which shall specifically include the Town of Windsor and its officers, boards, employees, attorneys, agents and consultants as additional named insureds;
 2. Umbrella coverage of not less than \$10,000,000; provided, that for BESS with an aggregate energy capacity equal to or greater than 5,000 kWh, the umbrella policy shall have a minimum limit of \$25,000,000 per occurrence;
 3. Automobile coverage and workers' compensation and disability coverage in statutory amounts; and
 4. For BESS with an aggregate energy capacity equal to or greater than 5,000 kWh, Environmental Impairment Liability Insurance (also known as Pollution Liability Insurance) covering the costs of clean-up, remediation, bodily injury, and property damage arising from pollution conditions related to the BESS, in an amount not less than \$10,000,000 per occurrence. Such policy shall: (a) include coverage for both gradual and sudden pollution events; (b) include the Town of Windsor as an additional insured on a non-contributory basis; (c) be maintained for the full duration of BESS operation and for a minimum of five (5) years following decommissioning; and (d) not contain exclusions that would limit coverage for battery-related chemical spills, thermal runaway incidents, or hazardous material releases.
- B. All such insurance shall be issued by an agent or representative of an insurance company licensed to do business in the State of New York with at least an A.M. Best rating of "A" and shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days' prior written notice in advance of cancellation, lapse, or material change in coverage.
- C. Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance policies then in place. No more than fifteen (15) days after the grant of the Special Use Permit, and in all events before construction is initiated, the permit holder shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts. Certificates of insurance and copies of the applicable policy endorsements shall be provided to the Town Clerk and kept on file, and proof of continued coverage shall be submitted annually.

Section 93-146 – Abandonment of Use; Decommissioning and Site Restoration

- A. Decommissioning Plan. The Applicant shall submit a Decommissioning Plan, developed in accordance with the Uniform Code, prepared by a New York State Licensed Professional Engineer and signed by the owner/operator, to the Town for approval. The

Decommissioning Plan shall identify the anticipated life of the project and shall include, at minimum:

1. A narrative description of the activities to be accomplished, including who will perform each activity and at what point in time, for the complete physical removal of all BESS components, structures, equipment (including any subsurface wires and footings), accessory structures, security barriers, and transmission lines from the site. Any access roads created for building or maintaining the system shall also be removed and replanted with vegetation, unless the Town receives the landowner's written consent to leave access roads in place and approves the same;
2. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
3. The estimated cost of decommissioning and site restoration and how said estimate was determined, which shall be based upon prevailing wages, FEMA equipment rental rates, federal per diem rates, and any other requirements applicable to municipalities under state or federal law, and which shall attribute no salvage value to any components of the BESS or the BESS equipment;
4. A schedule and methods for the removal of the BESS, including any ancillary structures, and the estimated hours of labor required to restore the property to its pre-installed condition and to repair any damage caused to the property by the installation and removal of the BESS;
5. The method of ensuring that funds will be available for decommissioning and restoration pursuant to Section 93-147, and the method by which the decommissioning cost estimate will be kept current;
6. A plan for restoring the property to its pre-installed condition, including grading and vegetative stabilization with native seed mixes that exclude invasive species, to mitigate any negative impacts to surrounding properties, and, where the land was previously used for farming, restoration with vegetation suitable for farming purposes. In the case of active agricultural land or lands containing Prime Farmland or Farmland of Statewide Importance, the Decommissioning Plan and Decommissioning Agreement shall expressly incorporate the applicable standards and construction-mitigation guidelines of the New York State Department of Agriculture and Markets for battery energy storage projects, as amended;
7. The manner in which changes to the surrounding areas and other systems adjacent to the BESS, such as structural elements, building penetrations, means of egress, and required fire detection and suppression systems, will be protected during decommissioning and confirmed as acceptable after the system is removed;
8. A listing of 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; and
9. Compliance of all decommissioning activities with the strictest standards of current and revised floodplain laws, regulations and standards.

- B. **Baseline Study.** The Planning Board may require, as part of any application subject to this Article, a baseline study prepared, signed and sealed by a qualified professional (which may include a New York-licensed Professional Engineer, Certified Soil Scientist, Certified Crop Advisor, and/or other professional acceptable to the Planning Board) documenting, to the extent directed by the Planning Board: existing soil conditions (including levels of heavy metals and PFAS at representative sample sites); existing ground and surface water conditions, if any; topographic and drainage mapping across the site; site photographs or video; historical agricultural productivity data for the site and adjacent areas of agricultural production; and existing vegetation cover mapping.
- C. **Restoration Verification.** Following decommissioning, the Developer shall submit a post-decommissioning restoration verification report, prepared, signed and sealed by a qualified professional acceptable to the Planning Board, which shall include, at minimum and to the extent a baseline study was required: post-restoration soil, groundwater, and surface water (if any) conditions at the same locations and using the same testing methodology as the samples analyzed in the baseline study; topographic and drainage mapping of the entire site after restoration; vegetation establishment testing; photographic comparison of post-restoration site conditions to the baseline study; and professional certification that the site has been restored as required pursuant to all applicable laws and regulations.
- D. **Abandonment; Triggering of Decommissioning Obligation.** A BESS shall be considered abandoned when it ceases to operate consistently for a period of six (6) months. The Developer of a BESS that has not operated for a period of six (6) months must notify the Town in writing within ten (10) days thereafter that the system is no longer operating. If the system ceases to operate for an additional six (6) months, the system shall be deemed abandoned and shall be decommissioned within six (6) months thereafter by the Developer in accordance with the Decommissioning Plan and Decommissioning Agreement. The implementation of the decommissioning plan shall also be required upon: (1) the revocation, termination, expiration or non-renewal of the Special Use Permit; (2) failure to complete construction within the time frames set forth in Section 93-150; (3) the BESS falling into such a state of disrepair that it creates a health or safety hazard; or (4) the location, construction or modification of a BESS without first obtaining, or in a manner not authorized by, the required approvals.
- E. **Coordination with Public Utility Provider.** As part of the decommissioning process, the Developer shall provide a detailed plan outlining the steps for proper disconnection and coordination with the public utility provider, including: (1) notification to the utility provider before decommissioning begins, with a copy contemporaneously provided to the Town, including system details such as the interconnection agreement reference, system capacity and point of interconnection; (2) compliance with all requirements of the utility interconnection agreement and disconnection of all grid-tied equipment by a licensed electrical contractor, with any dedicated transformers, switchgear and metering equipment installed specifically for the BESS removed or decommissioned per the utility provider's specifications; and (3) written confirmation of final site inspection verifying that all interconnection points have been properly de-energized and that no risks to grid stability or public safety remain, before the BESS shall be considered decommissioned or restored.
- F. **Public Notice of Decommissioning.** At least thirty (30) calendar days prior to the commencement of physical decommissioning activities, the Developer shall provide public

notice of the decommissioning, which shall include the name of the project and site address/parcels; the name and contact information of the Developer or designee; the start date and estimated timeline of decommissioning work; a description of the restoration work to be performed; and a statement of the availability of the full Decommissioning Plan. Proof of publication, mailing and posting shall be submitted to the Planning Board prior to the onset of ground disturbance for decommissioning.

- G. Failure to Decommission. If the owner or operator fails to comply with its decommissioning obligations, the Town may, at its discretion, enter the property, complete the decommissioning and restoration in accordance with the Decommissioning Plan and Decommissioning Agreement, and utilize the Decommissioning Fund and any other available security to pay for the removal of the BESS and restoration of the site. Any decommissioning costs incurred by the Town which have not been fully paid by the owner or operator shall be assessed against the property, shall (in addition to any other available remedies) become a lien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and shall be enforced and collected with interest by the same officer and in the same manner as other taxes. The Decommissioning Plan and Decommissioning Agreement shall provide for the ability of the Town, or its assignee or designee, to access the property in order to complete decommissioning if necessary.

Section 93-147 – Financial Security

- A. Decommissioning Fund. The owner/operator of a Tier 2 BESS shall continuously maintain a fund or security payable to the Town of Windsor, in a form approved by the Town Board and the Attorney for the Town, for the removal of the BESS and restoration of the site (the “Decommissioning Fund”). The Decommissioning Fund shall be no less than 150% of the current cost of removal and reclamation, with a three percent (3%) annual escalator, and shall be reviewed every five (5) years and reasonably adjusted by the Planning Board. The cost estimate shall not include credit for the salvage value of any components of the BESS. All costs of the financial security shall be borne by the Applicant. The Decommissioning Fund shall be deposited, filed or executed with the Town prior to the issuance of a building permit and shall consist of one or more of the following:

1. Certified or bank funds from a nationally licensed bank of the United States with a credit rating of “A” or better, deposited by the Town in an interest-bearing trust account at a federally insured, nationally licensed United States bank with a credit rating of “A” or better and total assets exceeding \$100 billion, naming said bank as trustee of said funds;
2. A surety bond issued by an insurance company, certified by the United States Department of the Treasury, with an A.M. Best rating of “A” or better and total assets exceeding \$100 billion; or
3. A standby letter of credit issued by a nationally licensed bank of the United States with a credit rating of “A” or better and total assets exceeding \$100 billion.

Any bond or letter of credit shall be in evergreen form. The security shall state on its face that it is held by and for the sole benefit of the Town, and the owner/operator shall not encumber or create any security interest in the security in favor of any third party. The

security established under this Section shall not be subject to disclaimer or rejection in a bankruptcy proceeding.

- B. Updated Estimates; Replenishment. Every five (5) years from the date of issuance of the building permit, or sooner upon the reasonable request of the Town, the Developer shall submit an updated decommissioning cost estimate prepared by a New York State Licensed Professional Engineer. If the updated estimate exceeds the current value of the held security, the Developer shall increase the financial assurance to the new amount within sixty (60) days. The security shall be replenished within thirty (30) days upon written notice from the Town if drawn upon, and shall remain in full force and effect until the project is fully decommissioned, final site restoration has been accepted by the Planning Board, and in no event less than ninety (90) days after the restoration of the property, as set forth in the Decommissioning Plan, is completed.
- C. Landscaping and Site Stabilization Security. The Developer shall provide security, in a form and amount determined by the Planning Board upon the advice of the Town Designated Engineer, to (1) maintain and/or replace the landscaping and screening required by this Article that is not adequately maintained or replaced by the Developer, and (2) ensure the installation, maintenance, and repair of all erosion and sediment control measures, stormwater practices, and site-stabilization features for the life of the project. Such security shall be replenished by the Developer when required by the Town and shall be maintained for the life of the project. If the Developer, its successors, or assigns fail to maintain effective erosion control, slope stability, stormwater infrastructure, landscaping, screening, or ground cover in accordance with the approved plans and applicable permits, the Town may draw on such security to correct deficiencies, complete necessary work, or restore the site.
- D. Transfers. In the event of a change in the Developer or owner of the BESS, the Decommissioning Fund and all other security required by this Article shall not be released to the original Developer until the successor has deposited replacement security in a form and amount acceptable to the Town. There shall be no period during which the facility is not fully secured. The successor must provide written proof of the replacement security at least sixty (60) days prior to the transfer. In the event the successor fails to replace any required security within sixty (60) days after transfer, the Town may consider such failure an event triggering decommissioning of the site.

Section 93-148 – Ownership Changes

If the owner or operator of a Tier 2 BESS changes, or the owner of the property hosting the BESS changes, the Special Use Permit, site plan approval and BESS Permit shall remain in effect, provided that the successor owner/operator assumes in writing all of the obligations of the Special Use Permit, site plan approval, BESS Permit, Decommissioning Plan, Decommissioning Agreement, and any other agreements entered into with the Town by the prior owner/operator, and provided that replacement security is furnished in accordance with Section 93-147(D). A new owner or operator of the BESS shall notify the Town Board of such change in ownership or operator in writing at least sixty (60) days before the ownership change. If a new owner or operator fails to provide written notification to the Town Board in the required timeframe, all required permits may be suspended upon written notification from the Town, and, at the discretion of the Code Enforcement Officer, a stop-work order may be issued. Reinstatement of local approvals

shall be subject to the same review and approval processes applicable to new applications under this Article. All required signage shall be updated accordingly.

Section 93-149 – Project Modifications

Any post-approval changes to a Tier 2 BESS, except for immaterial modifications as provided herein, shall be made only by amendment to the Special Use Permit and site plan approval, and shall be subject to the requirements of this Article. Unless expressly limited by a condition imposed in the permit, the Code Enforcement Officer, or other Town designee, may, during project construction, allow immaterial modifications to the design of the project as represented in the final set of site plans reviewed by the Planning Board. Such immaterial modifications shall only be allowed in response to a written request by the Developer or Property Owner, and all such requests shall be addressed to the authorized Town designee, with copies to the Planning Board.

Section 93-150 – Permit Time Frame

- A. Site plan approval, the Special Use Permit and the BESS Permit shall be valid for a period of twenty-four (24) months from the date of issuance, provided that a building permit is issued for construction within this period. In the event a building permit is not secured within twenty-four (24) months of approval, the Planning Board may extend the time to secure a building permit at its discretion, as part of its continuing jurisdiction over the Special Use Permit and site plan approval. If the owner or operator fails to secure a building permit within the extension period, the approvals shall expire.
- B. In the event that construction of an approved BESS has been started but the BESS is not completed and functioning within eighteen (18) months of the issuance of the building permit, the Town may notify the Applicant to complete construction and installation of the facility within ninety (90) days. If the Applicant fails to perform, or to apply for and receive an extension in accordance with this Section, the Town may notify the owner and/or operator to implement the Decommissioning Plan, which must be completed within one hundred eighty (180) days of such notification by the Town.

Section 93-151 – Enforcement; Default; Revocation; Penalties

- A. Notice of Violation. If a BESS is repaired, rebuilt, placed, moved, relocated, modified, operated or maintained in a way that is inconsistent or not in compliance with the provisions of this Article or any condition of approval, the Code Enforcement Officer shall notify the owner/operator of the BESS in writing of such violation. Such notice shall specify the nature of the violation or noncompliance and state that the violation must be corrected within thirty (30) days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this Article, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Code Enforcement Officer or his/her authorized designee may, at his/her sole discretion, order the violation remedied within twenty-four (24) hours, and the Town may take immediate corrective action at the Developer's expense.
- B. Revocation. If, within the period set forth in subsection A above, the BESS is not brought into compliance with the provisions of this Article, or substantial steps are not taken in

order to bring the same into compliance, the Code Enforcement Officer may revoke any or all certificates, permits or approvals issued by him/her and shall notify the owner/operator of the same within forty-eight (48) hours of such action. The Code Enforcement Officer shall additionally inform the Planning Board and Town Board of the owner/operator's failure to comply. The Planning Board may thereafter, in its discretion, and after providing the owner/operator with notice and an opportunity to be heard, revoke any previously granted Special Use Permit for the BESS in question, and the Town may draw from the Decommissioning Fund and other security to decommission the system and restore the property, and take any other action authorized by law.

- C. Penalties. A violation of this Article is hereby declared to be an offense, punishable by a fine not exceeding \$250 or imprisonment for a period not to exceed fifteen (15) days, or both. In addition, violations shall be punishable by a civil penalty of up to \$2,000 per day, plus all costs of enforcement, including reasonable legal fees. Each week's continued violation shall constitute a separate additional violation. The Town may also seek injunctive relief to prevent the continued violation of this Article, and may take such actions as necessary to prevent, mitigate, or remedy violations, including, but not limited to, issuing stop-work orders and commencing civil proceedings, without limiting other remedies available to the Town.
- D. No Evasion by Payment. The owner/operator of a BESS may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this Article. An attempt to do so may subject the owner/operator to the termination and revocation of any or all previously granted certificates, permits or approvals.
- E. Liability. Any Developer, and any Property Owner of the real property upon which a BESS is located, shall be liable for any violations of this Article, including failures to maintain decommissioning security, costs incurred by the Town in performing decommissioning and site restoration, and failures to pay any amounts due under any applicable Host Community Agreement or PILOT agreement. Such liability may be enforced against the Property Owner by the Town instituting a tax lien against such property for unpaid amounts due.

Section 93-152 – Waivers and Relief from Requirements of this Article

- A. Planning Board Waivers. The Planning Board shall have the authority to waive or modify application submission requirements and technical requirements of this Article for projects requiring Planning Board review, when the Planning Board determines that such waiver is consistent with the health, safety and welfare of the residents of the Town, so long as such waiver does not waive provisions otherwise required by law. Should the Planning Board grant a waiver, the Board may impose reasonable conditions associated with such waiver. Nothing in this subsection shall authorize the Planning Board to waive the dimensional requirements of Table 1, relief from which is reserved to the Zoning Board of Appeals pursuant to Section 93-134(M).
- B. Town Board Relief. Any Applicant desiring relief or exemption from any aspect or requirement of this Article that is a matter of legislative policy or contractual obligation may request such relief from the Town Board, acting in its legislative discretion, at a pre-application meeting, provided that the relief or exemption is contained in the original

application. Such relief shall not constitute or replace site plan approval or Special Use Permit approval, which are vested in the Planning Board, and shall not interfere with or undermine the Planning Board's authority to apply objective site plan, Special Use Permit, and SEQRA requirements under this Article. The Applicant shall bear the burden of proving the need for the requested relief to the satisfaction of the Town Board, and shall bear all costs of the Town in considering the request. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief or exemption will have no significant effect on the surrounding environment, or on the health, safety and welfare of the Town, its residents and emergency services providers.

Section 93-153 – Adherence to State and/or Federal Rules and Regulations

To the extent that applicable State or Federal laws, rules, regulations, standards or provisions of same are modified during the operation of a BESS, the owner/operator thereof shall conform the permitted BESS to the applicable changed and/or modified law, rule, regulation, standard or provision thereof within a maximum of twenty-four (24) months of the effective date of the applicable change, or sooner if required by a State or Federal agency responsible for the administration of the changed law, rule, regulation, standard or provision thereof.

SECTION 4. Severability.

If any provision, clause, sentence, subsection, word or part of this Local Law is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words, or parts of this Local Law or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Local Law would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and as if such person or circumstance, to which this Local Law or part thereof is held inapplicable, had been specifically exempt therefrom.

SECTION 5. Repealer.

All ordinances, local laws, and parts thereof inconsistent with this Local Law are hereby repealed.

SECTION 6. Conflict with Other Laws.

Where this Local Law differs or conflicts with other laws, rules and regulations, the more restrictive applicable law, rule or regulation shall apply. This section shall be inapplicable where County, State or Federal law preempts the application of a more restrictive law, rule or regulation, including the provisions contained in this Local Law. Notwithstanding the foregoing, in the event of any conflict between Article XVIII ("Battery Energy Storage Systems") and any other provision of Chapter 93, Article XVIII shall control as it relates to battery energy storage systems.

SECTION 7. Effective Date.

This Local Law shall take effect immediately upon filing with the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.