TOWN OF BARRE BATTERY ENERGY STORAGE SYSTEM

LOCAL LAW NUMBER 2 OF 2021

1. SECTION 350-200 Authority

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

2. SECTION 350-201 Statement of Purpose

This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Barre by creating regulations for the installation and use of battery energy storage systems, with the following objectives:

1. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems;
2. To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems;
3. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources; and
4. To create synergy between battery energy storage system development consistent to its Comprehensive Plan.

3. SECTION 350-202 Definitions

As used in this Section 350-200 – 350-218, 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:

1. 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.
2. 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.

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

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

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

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

B. No other occupancy types are permitted in the building.

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

D. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:

   1. The areas do not occupy more than 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.

E. Fences and screenings are not considered a permanent structure

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: Real property not under lease or other use agreement with an energy storage system company.

NON-PARTICIPATING STRUCTURE: Any structure regularly occupied by a person or persons located on real property not under lease to or other use agreement with, an energy storage system company.

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: Any structure regularly occupied by a person or persons located on real property under lease to, or other use agreement with, a wind generating company.

PLANNING BOARD: For the purposes of this Local Law shall means the Town of Barre Planning Board.

PUBLIC HEARING: A meeting announced and advertised in advance, and open to the public, with the public given an opportunity to talk, participate and express their opinions, support or concerns.

UL: Underwriters Laboratory, an accredited standards developer in the US.

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

SET BACK: The required minimum distance from the property line to the nearest part of the structure measured at the right angles to the property line within which a battery energy storage system is installed.

TOWN BOARD: is the Barre Town Board.

4. SECTION 350-203 Applicability

A. The requirements of this Local Law shall apply to all battery energy storage systems permitted, installed, or modified in the Town of Barre 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.

5. SECTION 350-204 General Requirements

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

B. Issuance of permits and approvals by the Barre Town Board shall include review pursuant to the State Environmental Quality Review Act (SEQRA).

C. All battery energy storage systems, all Dedicated Use Buildings, and all other buildings or structures that (1) contain or are otherwise associated with a battery energy storage system and (2) subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Barre Town Code.

D. Storage systems shall have a maximum lot coverage of 75%.

E. Storage systems shall be inspected by a New York State licensed professional engineer prior to obtaining a certificate of operation. Each (USSES) shall be inspected annually, or at any time that the Town Building Inspector has determined that damage may have occurred, by an NYSPE and a copy of the inspection report shall be submitted to the Town Building Inspector.

6. SECTION 350-205 Permitting Requirements for Tier 1 Energy Storage Systems

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.

7. SECTION 350-206 Permitting Requirements for Tier 2 Energy Storage Systems

Tier 2 Battery Energy Storage Systems are permitted through the issuance of a Special Use Permit within the Agriculture/Residential (A/R) zoning districts, and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section.

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

1. Reviewed by the Planning Board for completeness. An application shall be complete when it addresses all matters listed in this Local Law including, but not necessarily limited to, (i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and (ii) matters relating to the proposed battery energy storage system and Floodplain, Utility Lines and Electrical Circuitry, Signage, Lighting, Vegetation and Tree-cutting, Noise, Ownership Changes, Safety, and Permit Time Frame and Abandonment. Applicants shall be advised within 10 business days (of the first Planning Board meeting on the application) of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
2. Subject to a public hearing to hear all comments for and against the application. The Barre Town Board with recommendation of the Planning Board shall have a notice printed in a newspaper of general circulation in the town at least 10 days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within 500 feet of the property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Town Board at the public hearing.
3. Referred to the Orleans County Planning Department pursuant to General Municipal Law § 239-m if required.
4. Upon closing of the public hearing, the Town Board shall take action on the application within 62 days of the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Town Board and Applicant.

B. Utility Lines and Electrical Circuitry. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

C. Signage.

1. The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including reach-back phone number.
2. As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

D. Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

E. Vegetation and tree-cutting. Areas within 10 feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth and annually maintained. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.

F. Noise. The 1-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of 40 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 applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.

G. Decommissioning

1. The following requirements shall be met for decommissioning:
   a. The anticipated life of the battery energy storage system.
   b. A storage system which has been inactive for a period of one year shall be removed at the owners' or operators' expense withing six (6) months of the date of expiration of the one-year period All above ground and below ground equipment, conduits, structures, fencing and foundations shall be removed from the site to a depth of at least three (3) feet below grade.
   c. All above ground and below ground equipment, conduits, structures, fencing and foundations shall be removed from the site to a depth of at least three (3) feet below grade.
   d. The site shall be restored to as natural a condition as possible within six (6) months of the removal of all equipment, structures, and foundations. Such restoration shall include, where appropriate, restoration of the surface grade and soil after removal of all equipment and re-vegetation of restored soil areas with native seed mixes.
   e. Disposal of all solid and hazardous waste shall be in accordance with local, state, and federal waste disposal regulations
   f. 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.

2. Decommissioning costs shall be determined by an independent professional engineer during the application for the battery storage unit(s). The Town Board shall, as a condition of approval, require the posting of a removal bond of the storage unit(s). For the life of the battery storage system, the applicant or its successors or assigns, shall continuously maintain a bond or other appropriate form of financial security that is

acceptable to the Town and payable to the Town. The bond shall be maintained during the life of the project at 125% of the decommissioning cost. The value of the bond shall be renewed annually and increasing by 2.5% for inflation. The bond shall be reviewed and re-determined every five (5) years with a minimum value of 125% of the estimated decommissioning cost. All expenses or costs of establishing or maintaining financial assurance shall be borne solely by the applicant, or its successors or assigns. The Applicant shall provide proof of compliance with the bond requirement upon request of the Town. The Decommissioning Plan shall be reduced to a Decommissioning Agreement between the Town and applicant/operator.

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

1. Property lines and physical features, including roads, for the project site.
2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
3. An electrical line diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
4. A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
5. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
6. Name, address, phone number, and signature of the project Applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.
7. Zoning district designation for the parcel(s) of land comprising the project site.
8. Commissioning Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, Battery energy storage system commissioning shall be conducted by a New York State (NYS) Licensed Professional Engineer 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 Code Enforcement Officer who will forward to the Town Board after review, prior to final inspection and approval and maintained at an approved on-site location.

9. Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.
10. Operation and Maintenance Manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.
11. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
12. Prior to the issuance of the building permit or final approval by the Town Board with recommendation of the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.
13. Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, local fire code official and the Code Enforcement Officer. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, emergency responders and the Code Enforcement Officer. The emergency operations plan shall include the following information:
    a. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
    b. Procedures for inspection and testing of associated alarms, interlocks, and controls.
    c. Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
    d. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially

dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.

e. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.

f. Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.

g. Other procedures as determined necessary by the Town of Barre to provide for the safety of occupants, neighboring properties, and emergency responders.

h. Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.

I. Special Use Permit Standards.

1. Setbacks. Tier 2 Battery Energy Storage Systems shall comply with the setback requirements of the underlying zoning district for principal structures.
2. Height. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations of 20 feet.
3. Fencing Requirements. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a 7-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports. However, the Town Board shall have the discretion to vary or eliminate this requirement where appropriate.
4. Screening and Visibility. Tier 2 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.

J. Ownership/Operator Changes.

If the owner of the battery energy storage system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Code Enforcement Officer who will forward to the Town Board after review, of such change in ownership or operator within 30 days of the ownership/operator

change. A new owner or operator must provide such notification to the Code Enforcement Officer who will forward to the Town Board after review, in writing. The special use permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the Code Enforcement Officer who will forward to the Town Board after review, 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.

8. SECTION 350-207 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 local 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.

9. SECTION 350-208 Permit Time Frame and Abandonment

A. The Special Use Permit and site plan approval for a battery energy storage system shall be valid for a period of 12months, provided that a building permit is issued for construction and/or construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Town

Board, within 12 months after approval, the Town of Barre may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.

B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town of Barre 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.

10. SECTION 350-208 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 the Town of Barre.

11. SECTION 350-209 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. Notwithstanding any other abatement provision under this Local Law, if the Battery Storage system is not repaired or made operational, or brought into Special Use Permit compliance after notice and within the time limitations set forth above, the Town may, after a public meeting at which the operator or owner shall be given an opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular time frame, or (2) order revocation of the Special Use Permit and require the removal of the Battery Energy Storage System and shall have the right to use the security posted as part of the Decommission Plan for the removal.

12. SECTION 350-210 Penalties for Offenses

Violations of this section are subject to a maximum fine of $250 per day, each day of violation is a separate offense.

13. SECTION 350-211 Appeals

A. If a person is found to be in violation of the provisions of this article, appeals may be made to the Zoning Board of Appeals in accordance with the established procedures and time limits of the Town of Barre Code and New York State Town Law.

B. If a building permit for a battery energy storage system is denied based upon a failure to meet requirements of this law, the applicant may seek relief from the Zoning Board of Appeals in accordance with the established procedures and time limits of the Town of Barre Code and New York State Town Law.

14. SECTION 350-212 Building Permit Fees for Solar Panels

The fees for all building permits required pursuant to this article shall be paid at the time of each building permit application pursuant to the Fee Schedule of the Town of Barre.

15. SECTION 350-213 Supersession

This local law is hereby adopted pursuant to the provisions of RPTL ~487, ~10 of the New York State Municipal Home Rule Law and ~10 of the New York State Statute of Local Governments. It is the intent of the Town Board to supersede any provisions of the New York State Law to the extent that they may be inconsistent with the provisions of this Local Law.

16. SECTION 350-214 Effective Date

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

17. SECTION 350-215 Tax Exemption

The town hereby exercises its right to opt out of the tax exemption provisions of the Real Property Tax Law § 487, pursuant to the authority granted by Subdivision 8 of that law.

18. SECTION 350-216 Host Agreement

The applicant for a Battery Energy Storage System shall enter into a Host Community Agreement with the Town. The applicant or its successors shall be required to pay the Town a Host Community Fee annually to compensate the Town for expenses or impacts on the additional agreements with the applicant as may be necessary to protect the Towns and its citizens interest (E.g., separate road use and maintenance agreement or decommissioning agreement). The Host Community Fee shall be in addition to any payment in lieu of taxes which may be authorized to be collected by the Town pursuant to Section 487of the Real Property Tax Law of the State of New York. The amount of the Host Community Fee will be determined by the Town Board from time to time but not more frequently than annually.

19. SECTION 350-217 Engineering and Legal Costs

The Town shall require any applicant to enter into as Escrow Agreement to pay the engineering environmental review and legal costs of any application review, including but not limited to the

review required by SEQRA. All such fees shall be negotiated and determined prior to the approval and issuance of a Special Use Permit for a Battery Energy Storage System.

20. SECTION 350-218 Certifications

1. Routine Inspection Report - An inspection report prepared by an independent professional engineer licensed in the State of New York shall be required at the completion of the installation of the Battery Energy Storage System. Said inspection report shall certify the Battery Energy Storage System and any portion thereof complies with all manufacturing specifications and any and all rules, regulations and statues pertaining thereto. Said inspection report shall be filed with the Code Enforcement Officer and the Town Clerk.

2. Insurance - Liability - Prior to the issuance of a building permit regarding an approved Battery Energy Storage System, the Applicant shall file with the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, of liability insurance in a reasonable level as determined by the Town Board in consultation with the Town's insurer, guided by industry standards, to cover damage or injury which might result from the Wind Energy Conversion System or any portion thereof. Such liability insurance shall also name the Town and the current property owner of record as an additional insured, unless said property owner waives such coverage in writing.