LOCAL LAW NO. ____-2026

TOWN OF AMHERST

COUNTY OF ERIE, STATE OF NEW YORK

A Local Law Making Amendments To Chapter 203 Of The Code Of The Town Of Amherst, Also Known As Zoning Ordinance.

Be it enacted by the Town Board of the Town of Amherst as follows:

§6-12 Battery Energy Storage Systems.

6-12-1. Purpose. To provide regulations for Battery Energy Storage Systems (hereafter referred to as "BESS") ~~as a principal use,~~ to ~~further~~ protect the public health, safety, and general welfare, of the community with the following objectives:

A. To ~~provide regulations for the designation of~~ designate locations suitable for construction and operation of ~~battery energy storage systems~~ BESS;

B. To ensure that ~~Battery Energy Storage System~~ BESS are compatible with adjacent land uses;

C. To mitigate ~~for the visual~~ [all] impacts ~~from~~ on the public domain and surrounding areas ~~associated with Battery Energy Storage Systems~~ from BESS;

D. To provide areas within the Town to support a more resilient electrical energy delivery system that serves the immediate community, while establishing minimum safeguards to protect nearby residential uses and community.

6-12-2. Definitions. (See Section 2-4 "Specific Terms" of Zoning Ordinance)

BATTERY ENERGY STORAGE SYSTEM

6-12-3. Applicability.

A. ~~The~~ These requirements shall apply to all ~~battery energy storage systems~~ BESS being established as ~~principal uses~~ a use permitted in the Town of Amherst, after the effective date of this Local Law, excluding general maintenance and repair.

B. ~~Battery energy storage systems~~ BESS constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law, unless modified, replaced or expanded.

C. ~~Battery Energy Storage Systems~~ BESS that are accessory to an existing electrical substation facility operated and owned by National Grid or NYSEG will not be regulated by this section.

D. ~~Battery Energy Storage Systems~~ BESS that are accessory to solar energy systems shall be regulated as part of Section 6-10 (Solar Energy).

6-12-4. General Requirements

A. ~~Major~~ Site Plan Review pursuant to Section 8-7 of Town Code shall apply to all ~~BESS facilities >100 kWh~~ Tier II and Tier III BESS.

B. A building permit and~~,~~ an electrical permit ~~and an operating permit~~ shall be required for the installation of all ~~battery energy storage systems~~ BESS.

C. An operating permit shall be required for all Tier III BESS.

D~~C~~. Issuance of permits shall be from the Building Department and the Fire Safety Inspectors~~.~~ following their determination of compliance with the applicable building, electric, and fire codes.

~~6-12-5 Permitting Requirements for Battery Energy Storage Systems.~~

~~A. Battery Energy Storage systems are divided into two three categories, as follows:~~

~~1) Tier I Battery Energy Storage Systems are defined as battery energy storage systems that produce <600 kWh for residential or non-residential use.~~

~~2) Tier II Battery Energy Storage Systems are battery energy storage systems that produce greater than >600 kWh.~~

~~B. Tier I Battery Energy Storage Systems shall be permitted in all zoning districts, subject to the NYS Building Code and the "Battery Energy Storage System Permit," and are exempt from site plan review.~~

~~C. Permitting Requirements for Tier II Battery Energy Storage Systems. Tier II Battery Energy Storage Systems are permitted through the issuance of a Major Site Plan review within the Research and Development (RD) and General Industrial (GI) zoning districts, and shall be subject to the NYS Uniform Fire Prevention and Building Code and the site plan application requirements set forth in Part 8 of this Chapter.~~

6-12-5 ~~Requirements for Battery Energy Storage Systems~~ BESS Tiers and Standards

A. BESS are divided into three tiers, as follows:

1) Tier I – ~~defined as battery energy storage systems that produce up to 100 kWh~~ BESS with an energy storage capacity less than 100 kWh. Permitted as an accessory use in all zoning districts subject to the dimensional standards of the underlying district.

~~2)~~ Tier II – ~~defined as battery energy storage systems that produce between 100 to 600 kWh~~ BESS with an energy storage capacity greater than or equal to 100 kWh, but less than 600 kWh. Permitted as an accessory use in all zoning districts, except any district that permits only one principal residential structure per lot, and subject to the principal use dimensional standards of the underlying district.

3) Tier III - ~~defined as battery energy storage systems that produce >600 kWh~~ BESS with an energy storage capacity greater than or equal to 600 kWh. Permitted as a principal or accessory use in the Research and Development (RD) and General Industrial (GI) districts only, and subject to the Tier III BESS standards in 6-12-6.

~~B. Tier I Battery Energy Storage Systems are permitted in all zoning districts. These systems are subject to underlying dimensional standards of the zoning district.~~

~~C. Tier II Battery Energy Storage Systems BESS are suitable for both residential and non-residential uses. These systems can be either the principle use or an accessory use and may be subject to site plan review and approval.~~

~~D. Tier III Battery Energy Storage Systems are permitted in the Research and Development District (RD) and General Industrial District (GI) zoning districts only, and are subject to Major Site Plan review and application requirements set forth in Part 8 of this Chapter. In addition, these systems shall be subject to the NYS Uniform Fire Prevention and Building Code.~~

6-12-6 ~~Major Site Plan Application Requirements~~. Tier III BESS Standards

A. ~~Site Plan Criteria~~: Major Site Plan Review and application requirements, as set forth in Part 8 of this Chapter, shall be required.

B~~1~~. Setbacks shall conform with the principal use dimensional standards of the underlying district as measured from the fence enclosure, as well as the following supplemental setback standards:

~~Tier II~~ III ~~Battery Energy Storage Systems shall comply with the setback requirements of the underlying zoning district for principal structures on the parcel. Additional setback requirements include:~~

1) ~~a)a 500-foot setback from the system compound fence to the nearest residential zoning district~~. Setbacks from residential zoning districts shall be a minimum of

500 feet. The Planning Board may reduce this setback where the Applicant demonstrates, through a site-specific "Hazard Mitigation Analysis" or equivalent technical study, that a lesser setback will adequately protect public health, safety, and welfare.

a) Any reduced setback to a residential zoning district to be considered by the Planning Board as permitted by section 6-12-6B(1) must be evaluated against the following criteria;

i. Whether the applicant has demonstrated that alternative sites are not technically feasible and;
ii. Whether the reduction in the setback is substantial and;
iii. Whether the hazard mitigation analysis has shown that adjacent residential zoned lands will not be impacted; and
iv. Whether the applicant has shown that he/she would incur an extraordinary hardship without a reduction in the required setback to the residential zoned properties or residential district line.

2) ~~b)~~b ~~100' front setback from the property line [*the center line of the roadway*]to the compound fence.~~ Setbacks from property lines adjacent to roadways shall be a minimum of 100 feet.

C~~2~~) Height of structures~~. Tier II III Battery Energy Storage Systems~~ shall comply with the principal use dimensional standards ~~building height limitations for principal structures~~ of the underlying zoning district.

D~~3~~) ~~Fencing Requirements. Tier II III Battery Energy Storage Systems, including~~ Aall mechanical equipment shall be enclosed by an opaque fence. ~~6-foot-high fence maximum. The fencing materials should be of a camouflage nature. opaque and include privacy screening material. When Once fencing is installed, barbed wire or a similar style security-top fencing shall not be utilized. Fencing may be further screened by landscaping needed to avoid adverse aesthetic impacts.~~

E~~4~~) ~~Screening and Visibility. Tier II III Battery Energy Storage Systems shall require~~ High Impact Screening ~~per~~ pursuant to Section 7-2-4B(1) shall be provided to minimize views~~.~~ ~~Tier II III BESS projects 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~~ while maintaining safe access for emergency response and operation of the ~~Battery Energy Storage system~~ BESS.

F~~B~~.~~Utility Connections. Required connections to a utility providers' existing overhead infrastructure and all on site transmission lines and other electrical connections shall be made underground~~. One new above grade utility ~~connection~~ pole shall be permitted ~~for metering and main connection purposes~~ per electrical connection to

~~near~~ the utility provider's existing distribution line. All ~~new required~~ other connection equipment ~~including but not limited to reclosers, GOABS, switch gear, fused cutouts and transformers~~ shall be ground mounted and located within the required fence enclosure. ~~the BESS compound~~, ~~maintaining the required setbacks of the battery energy storage system compound~~.

G~~C~~. ~~Signage.~~ ~~The~~ Ssignage shall be limited to that required for safety purposes. ~~that are in compliance with the National Electric Code (NEC) and ANSI Z535 standards for safety 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 National Electric Code (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~~.

H~~D~~. Lighting shall be limited to that required. ~~F~~for safety and operational purposes and shall conform to the requirements of Section 7-3 of this Chapter.~~, lighting shall be dark-sky compliant as required by Chapter 203 Zoning of the Code of the Town of Amherst Section 7-3~~.

~~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 as required in Section 7-3.~~

I~~E~~. Applicants shall provide an acoustical analysis to demonstrate compliance with Chapter 138 of Town Code (Noise). ~~Noise. The [1-hour] average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a daytime noise level of 70 dBA as measured at the property line of a residential property; or 50 dBA between 11 pm – 7 am (See §138-5P). Applicants shall submit an acoustic analysis to demonstrate compliance. The applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations after construction to demonstrate compliance with this standard.~~

J~~F~~. ~~Environmental and Safety Assessment.~~ A site-specific air quality assessment report evaluating potential air pollutant impacts in the event of a fire or other incidents, including dispersion and risk assessment models ~~is required for Tier II~~ III facilities at ~~site plan review~~ if near sensitive uses, but not limited to, including K-12 public and private schools, hospitals, nursing homes, childcare facilities and assisted living facilities, may be required by the Planning Director as part of site plan review.

K~~G~~. ~~Decommissioning.~~ A decommissioning plan and ~~financial security~~ surety bond ~~solely~~ acceptable to the Town ~~of Amherst~~ shall be required prior to issuance of ~~building~~ permits. ~~See Chapter 203 of the Code of the Town of Amherst Section 6-13 for requirements.~~

L~~H~~.~~Ownership Changes~~. If the owner or operator of the property or BESS changes ~~battery energy storage system changes or the owner of the property changes,~~ the site plan approval shall remain in effect, provided that the successor ~~owner or operator~~ assumes in writing all of the obligations of the site plan approval, ~~and~~ decommissioning plan, and surety bond. A new owner or operator ~~of the battery energy storage system~~ shall notify the ~~Code Enforcement~~/Zoning Enforcement Officer in writing of such change ~~in ownership or operator~~ within [30] days. All local permits and approvals~~, including all local approvals for the battery energy storage system~~ will be void if a new owner or operator fails to provide such written notification. ~~to the Building Department and Code Enforcement/Zoning Enforcement Officer in the required timeframe.~~ Reinstatement of voided local permits and approvals ~~of a void site plan approval~~ will be subject to the same review and approval processes for new applications under this Local Law.

~~6-12-7. Safety~~

~~A. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory (NRTL) to UL 9540 (Standard for battery energy storage systems and Equipment) or approved equivalent,; and shall have undergone UL 9540A testing, 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 a New York State 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.~~

M~~B.~~ ~~A Draft Emergency Management Plan shall be provided by the applicant for Tier III BESS installations~~ Applicants shall provide an Emergency Management Plan as part of the application materials~~.~~, that must be ~~The Emergency Response Plan shall be finalized, in accordance with the local fire department and applicable emergency~~

~~responders, and~~ approved by Fire Safety prior to final permitting by the Building Department, and shall be a condition of site plan approval.

N~~C~~. ~~Site Access. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards.~~ Site access shall be maintained, unobstructed at all times, including snow removal to provide for local emergency service response.

~~C.~~ D. ~~Battery energy storage systems, components, and associated ancillary equipment shall have and maintain required working space clearances. All electrical service connections shall be located in accordance with the accessory structure dimensional standards for the applicable zoning district. Electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70 (or the National Electric Code (NEC code).~~

Section 2-4 "Specific Terms" Definitions

~~As used in §6-12, the following terms shall have the meanings indicated:~~

~~**ANSI:** an abbreviation for the American National Standards Institute; Z535 establishes the uniform system of safety signs, labels, and colors to prevent accidents.~~

~~**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 SYSTEM: One or more stationary, rechargeable devices, assembled together, along with associated equipment, systems, or enclosures designed to store ~~capable of storing~~ electrical energy received from the electric grid or on-site generation sources and to deliver such energy for use at a later time. ~~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 I, II or III Battery Energy Storage System as follows:~~ stated in Section 6-12-5A(1).

A~~. Tier I Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.~~

~~B. Tier II Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area.~~

~~**BATTERY ENERGY STORAGE PERMIT:** required to install, operate, and decommission electrochemical battery systems, ensuring they meet safety, zoning, and building codes.~~

~~**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 pertaining to fire protection 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:** an abbreviation for the National Electric Code.~~

~~**NFPA:** an abbreviation for the National Fire Protection Association.~~

~~**NYSEG:** an abbreviation for New York State Electric and Gas~~

~~**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.~~