



AGENDA
City of Fergus Falls Planning Commission Meeting
March 24, 2025
5:15 PM in City Council Chambers

1. Call to Order
2. Approval of Minutes from January 27, 2025 and Agenda
3. New Business
 - a. Council-Directed Review of City Code Regarding Private Garages
 - b. Conditional Use Permit Process to Allow Pylon Signs in B-2 and B-3 Zoning Districts
 - c. Battery Storage Regulations
 - Context & Introduction
 - Suggested Next Steps
4. Old Business
5. Adjourn

Reminder: A special session of the Planning Commission will be held on April 8, 2025, at 5:15 PM to review two Interim Use Permit applications.

If you have special needs for accommodations, please call 332-5436 or TDD 1-800-627-3529 (Minnesota Relay Service).

PLANNING COMMISSION MINUTES

January 27, 2025

The Fergus Falls Planning Commission held a regular meeting on January 27, 2025 in the Council Chambers of City Hall. The meeting was called to order at 5:15 PM. Present were Nate Kunde, Mike Walls, Wayne Schuett, Ryan Fullerton, Paul Vukonich and Ala Lysyk. Sarah Duffy was absent. Staff present: Klara Beck and Jill Hanson.

APPROVAL OF AGENDA

Motion to approve the agenda by Commissioner Kunde and seconded by Commissioner Fullerton. Passed unanimously.

APPROVAL OF MINUTES

Commissioner Kunde made a motion to approve the minutes from November 25, 2024. It was seconded by Commissioner Fullerton. Passed unanimously.

NEW MEMBER WELCOME

Ala Lysyk was welcomed as the newest Planning Commission member.

ELECTION OF OFFICERS

Community Development Director Klara Beck informed the Planning Commission of the need to elect a Chair, Vice Chair, and Ex-Officio Representative to the Heritage Preservation Commission (HPC) for 2025. Currently, Sarah Duffy serves as Vice Chair, and Wayne Schuett is the HPC Ex-Officio Representative.

A motion was made by Commissioner Fullerton and seconded by Commissioner Kunde to nominate Sarah Duffy as Chair of the Planning Commission. Motion passed unanimously.

A motion was made by Commissioner Fullerton and seconded by Commissioner Lysyk to nominate Nate Kunde as Vice Chair of the Planning Commission. Motion passed unanimously.

A motion was made by Commissioner Fullerton and seconded by Commissioner Lysyk to nominate Mike Walls as Ex-Officio Representative to the Heritage Preservation Commission. Motion passed unanimously.

PUBLIC HEARING

5a. REQUEST BY FERGUS FALLS HABITAT FOR HUMANITY TO OBTAIN A VARIANCE TO ALLOW FOR SPLITTING OF A LOT WITHIN AN R-1, ONE-FAMILY RESIDENCE DISTRICT LOCATED AT 911 SPRINGEN AVEUE INTO TWO NONCONFORMING LOTS

Community Development Director Klara Beck explained the variance application process and when a variance is required. She then presented the staff report for a variance request in the R-1 zone at 911 Springen Avenue. The applicant proposes to split the lot into two 54' x 228' parcels to accommodate the construction of two Habitat for Humanity homes, contributing to new housing development in the community. During discussion, it was noted that power lines may run through the lot, and the applicant should be made aware of this potential issue.

Chair Kunde opened the public hearing at **5:35 PM**. Hearing none, Chair Kunde closed the public hearing at **5:36 PM**.

Commissioner Fullerton motioned to recommend approval of the variance request, seconded by Commissioner Lysyk. Motion passed.

OLD BUSINESS

6a. SHORELINE MANAGEMENT ORDINANCE UPDATE

Klara Beck explained that the Planning Commission has updated the Shoreline Ordinance to align with Minnesota DNR standards. The City Council requested clarification from the DNR on certain items before final approval. Staff is awaiting a response from the DNR. Brief discussion followed.

COUNCIL UPDATE

After an unusual delay, the City Council designated the Daily Journal as their legal publication for running legal notices. Legal notices are key to Planning Commission activities.

The meeting adjourned at **5:50 PM**.



Planning Commission Memo

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Meeting Date:

March 24, 2025

Subject:

Council-Directed Review of City Code re: Private Garages

Background:

The City Council has directed the Planning Commission to review zoning code language regarding stand-alone garages in residential districts. Currently, city code does not allow for stand-alone garages on residential lots without a primary structure. Garages are classified as accessory structures, requiring a principal use or structure on the lot.

A resident contacted a council member to request a change to the city code to allow a stand-alone garage, prompting this review. The Planning Commission is therefore asked to evaluate potential revisions to the zoning code to determine if or how stand-alone garages may be permitted in residential zones.

Possible next steps:

- Maintain the current zoning regulations, which prohibit stand-alone garages, OR
- Redefine garages as primary structures, OR
- Implement a Conditional Use Permit process for stand-alone garages.

Respectfully Submitted:

Klara Beck

Community Development Director

Attachments:

Garage Use at 712 Springen Ave

Council-

This missive is in response to outreach from councilmember Mark Leighton, which was forwarded to me for zoning information. Mr. Leighton was contacted by resident Levi Long regarding 712 Springen Ave (context map is attached). The property is owned by a member of Mr. Long's family. The lot is 55' x 182' and as pictured and valued in 2023 holds a 360 sq ft garage built in 1952.

I've attached a PDF copy of Mr. Leighton's email, but in order to provide clear answers to each point, I've interspersed excerpts:

From: Mark Leighton <mark.leighton@fergusfallsmn.gov>
Sent: Saturday, February 22, 2025 1:47 PM
To: Andrew Bremseth <andrew.bremseth@fergusfallsmn.gov>
Cc: Anthony Hicks <Anthony.Hicks@fergusfallsmn.gov>
Subject: FFCC - Zoning 712 Springen Ave / Tax No. 7100 2991 115000

Mr. Bremseth

Mr. Levi Long (and his family) wish to build a garage on this property, as they live in the neighborhood. This has been in front of the city before, and unfortunately, current zoning dictates a stand-alone garage cannot be built on a lot without a residence/home.

I want to assist these constituents in building a lovely building – call it what you want:

1. Garage
2. Man Cave
3. Workshop
4. Tiny Home
5. Small home with large garage.

Mr. Leighton is correct. City zoning code, implemented in 1965, does not allow for the construction of a stand-alone garage on a lot in an R-1 zone. Mr. Long's options are either to establish a primary structure or use on the lot to which a garage may be accessory or to request a change to city code. When talking with Mr. Long, he indicated his desire was to see a change in city code, so I suggested he reach out to members of the City Council to pursue that option.

To help me understand the “stonewall” on this matter, what is the definition of:

1. Residence
 1. What is the definition of a residence?
2. Garage
 1. What is the definition of a garage/stand-alone building
 - i. With no residence.

We do not define the term residence in Chapter 154: Zoning and Subdivisions, which is the code relevant to this case. Instead, we define dwelling in [§ 154.002 DEFINITIONS](#):

DWELLING. Any building or part thereof which is designed or used exclusively for residential purposes by one or more human beings, either permanently or transiently.

- (1) MULTIPLE DWELLING. A building designed or occupied by more than two families.
- (2) SINGLE-FAMILY DWELLING. A building designed for or occupied exclusively by one family.
- (3) TWO-FAMILY DWELLING. A building designed for or occupied by two families.

In Fergus Falls City Code Chapter 154, a garage is treated as an accessory building/use. The code defines an “Accessory Building or Use” as:

“A subordinate building or portion of the main building, or subordinate use which is located on the same lot as the main building and the use of which is clearly incidental to the use of the main building.”

A typical detached garage falls under this category. The code specifically defines a “Private Garage” as “A garage with a capacity of not more than four power-driven vehicles for storage only and which is erected as an accessory building.”

And current

3. Zoning language

1. What options are available to get a conditional permit/relief on just building a
 - i. building

1. After some discussion on what this building needs to be identified as,

712 Springen Ave is zoned [R-1, One-Family Residence District](#), which is intended as a district for residential development. **Permitted building uses** in the R-1 district are:

- (1) Single-family detached dwellings;
- (2) Parks and recreational areas owned or operated by governmental agencies;
- (3) Public schools, elementary, secondary and colleges and universities, or private schools having a curriculum equivalent to a public elementary, secondary school, college or university;
- (4) Golf courses, except club houses, miniature courses and driving tees operated for commercial purposes; and
- (5) Churches; provided that, no building shall be located within 50 feet of any lot line of an abutting lot in any of the classes of residence districts.

Permitted accessory uses in the R-1 district include private garage.

Allowable uses by **conditional use permit** in an R-1 zone are as follows:

- (1) Municipal administration buildings, police and fire stations, hospitals and medical clinics, medical related sales and services when located within a medical clinic building or hospital; and, provided, they shall not occupy more than 20% of the gross floor area of the building, or only where directly adjacent to hospitals, community center buildings, public libraries, museums, art galleries, post office and other municipal service buildings, except those customarily considered industrial in use; provided that, none

of the above mentioned buildings shall be located within 50 feet of any abutting lot that contains a dwelling or is vacant in any of the classes of residence districts;

(2) Water supply buildings, reservoirs, wells, elevated tanks and similar essential public utility and service structures;

(3) Golf club house, country club, public swimming pool, private swimming pool serving more than one family; provided that, no principal structure shall be located within 50 feet of any lot line of an abutting lot in any of the classes of residence districts;

(4) Cemetery or memorial garden;

(5) Keeping three or more boarders and/or roomers by a resident family;

(6) If, prior to 9-1-1977, the use has been a public or private school, a church or other church purpose (excluding a parish house), a city, state or federal government purpose, a hospital, a nursing home, a medical clinic or a small retail or grocery store, it may be remodeled and allowed as a conditional use if it meets the restrictions of this division. The conditional uses may be professional offices and offices of a general nature including, but not limited to, doctors, dentists, lawyers, architects, engineers, accountants, insurance, real estate, government and non-profit organizations. Uses which cannot be allowed are retail sales, wholesale sales or warehousing. The building to be so remodeled and used must retain at least 60% of the exterior structure of the original building; and

(7) The conversion of an existing single-family dwelling to a two-family dwelling on a lot of record existing at the effective date of this division, provided the lot is not less than 9,000 square feet in area, 75 feet in width and 120 feet in depth. The conversion of a one-family dwelling to a two-family dwelling may be allowed on a lot 50 feet or greater in width and less than 75 feet; provided, the lot is at least 9,000 square feet in area.

Building use must fall within the permitted, permitted accessory, or conditional uses found in code for the R-1 zone.

The variance process isn't specifically mentioned in Mr. Leighton's email, but should it come up in conversation, it should be noted that MN State law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located (Minn. Stat. § 462.357, subd. 6).

Mr. Long would like to build “conceptually.”

- i. 36' x 36' building
- ii. Front view
 - i. Double garage door
 - ii. Front entry door
 - iii. Cemented
 - iv. Electric
- iii. Hookups
 - 1. water and sewer [Capped]
 - i. For future use
 - ii. Mr. Long is in a wheelchair, so water and sewer aren't necessary
 - 1. Natural gas
 - i. Potential heat

The bottom line is that I want to assist these taxpayers in making their dreams come true by working through the city's zoning.

I want to get this on one of the upcoming council member meetings as soon as possible.

My only feedback on the conceptual building plans is to say that a 36' x 36' building will require a building permit and that I disagree that “water and sewer aren't necessary” for wheelchair users.

If the goal is to work through the city's current zoning process, then Mr. Long may establish a primary structure and use on the lot to which the garage may be a subordinate building or portion of the main building or subordinate use located on the same lot as the main building, the use of which is clearly incidental to the use of the main building.

Otherwise, the City of Fergus Falls has a Planning Commission whose duties include adjudicating and issuing decisions on appeals and adjustments related to zoning and land use, as well as conducting studies, investigations, and making recommendations to the City Council on zoning, platting, and public improvements when requested. Council may therefore direct the Planning Commission to review and issue a decision regarding stand-alone garages in the R-1 zone.

Sincerely,

Klara Beck
Community Development Director



Planning Commission Memo

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Meeting Date:

March 24, 2025

Subject:

Battery Storage Regulations

Background:

As due diligence for a possible sale or lease of Port Authority property for a battery storage project on Port property, staff have had discussions with Randy Synstelien, Manager of Renewable Energy Development at Otter Tail Power Company, regarding battery energy storage projects and their role in future energy solutions. Otter Tail Power's resource plan does include battery storage as a future component, though it is currently prioritized behind solar and wind.

However, given the emerging nature of battery storage projects, Mr. Synstelien recommended that the city begin incorporating ordinance language for battery storage into its zoning code, similar to how regulations for solar energy were established in preparation for the Hoot Lake Solar project. This proactive approach would help ensure that the city has a framework in place for future energy developments.

Staff recommend covering most or all these components in discussion for an ordinance update:

- Definitions
- Use permissions
- Dimensional standards
- Performance & design standards
- Safety and first responder standards
- Decommissioning standards

Model language does exist. The extent to which it should be adapted to Fergus Falls should be discussed.

Respectfully Submitted:

Klara Beck

Community Development Director

Attachments:

Battery Energy Storage System Model Law

Battery Energy Storage System Model Law

For local governments to utilize when drafting local laws and regulations for battery energy storage systems.



NYSERDA

Battery Energy Storage System Guidebook for Local Governments
NYSERDA 17 Columbia Circle Albany, NY 12203

Section Contents

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Overview

The Model Law is intended to help local government officials and AHJs adopt legislation and regulations to responsibly accommodate battery energy storage systems in their communities. The Model Law lays out procedural frameworks and substantive requirements for residential, commercial, and utility-scale battery energy storage systems.

The workable version of this document can be found at nyserdera.ny.gov/Energy-Storage-Guidebook, under Battery Energy Storage System Model Law tab.

1. Instructions

1. This Model Law can be adopted by the governing board of cities, towns, and villages (hereinafter “local governments” or “municipalities”) to regulate the installation, operation, maintenance, and decommissioning of battery energy storage systems. The Model Law is intended to be an “all-inclusive” local law, regulating the subject of battery energy storage systems under typical zoning and land use regulations and it includes the process for compliance with the State Environmental Quality Review Act. Municipalities should review this Model Law, examine their local laws and regulations and the types, size range and number of battery energy storage system projects proposed, and adopt a local law addressing the aspects of battery energy storage system development that make the most sense for each municipality, deleting, modifying, or adding other provisions as appropriate.
2. This Model Law references a “Battery Energy Storage System Model Permit” that is available as part of NYSERDA’s Battery Energy Storage Guidebook. The Model Permit is intended to help local government officials and AHJs establish the minimum submittal requirements for electrical and structural plan review that are necessary when permitting residential and small commercial battery energy storage systems.
3. In some cases, there may be multiple approaches to regulate a certain aspect of battery energy storage systems. The word “OR” has been placed in the text of the model law to indicate these options. Municipalities should choose the option that works best for their communities. The content provided in brackets and highlighted is optional. Depending on local circumstances, a municipality may want to include this content or choose to adopt a different standard.
4. The Model Law is not intended for adoption precisely as it is written. It is intended to be advisory only, and users should not rely upon it as legal advice. A municipality is not required to adopt this Model Law. Municipal officials are urged to seek legal advice from their attorneys before enacting a battery energy storage system law. Municipalities must carefully consider how the language in this Model Law may be modified to suit local conditions, comprehensive plans, and existing land use and zoning provisions.

5. Before enacting this Model Law, a comprehensive plan outlining the goals and policies for the installation, operation, maintenance, and decommissioning of battery energy storage systems must be adopted by the local governing board (city or common council, town board, village board of trustees). Some local governing boards can satisfy this requirement by updating an existing comprehensive plan while others must adopt a new comprehensive plan. Suggestions on how local governing boards can develop and adopt in their existing or new comprehensive plans battery energy storage system friendly policies and plans that provide local protection are listed below:
- A. Adopt a resolution or policy statement that outlines a strategy for municipal-wide battery energy storage system development. The chief executive officer of a local government (like a town supervisor or city or village mayor) may choose to issue in accordance with its local charter or other valid local law or regulations an executive order, proclamation or other declaration to advance battery energy storage system development.
 - B. Appoint a Battery Energy Storage Task Force (“Task Force”) that represents all interested stakeholders, including residents, businesses, interested non-profit organizations, the battery energy storage industry, utilities, and relevant municipal officials and staff to prepare an action plan, adopt or amend a comprehensive plan to include battery energy storage system planning goals and actions, and develop local laws and/or other regulations to ensure the orderly development of battery energy storage system projects.
 - C. Charge the Task Force with conducting meetings on a communitywide basis to involve all key stakeholders, gather all available ideas, identify divergent groups and views, and secure support from the entire community. The Task Force should also conduct studies and determine whether existing policies, plans, and land use regulations require amendments to remove barriers to and facilitate battery energy storage system development goals.
 - D. Establish a training program for local staff and land use boards. Municipalities are encouraged to utilize State and Federal technical assistance and grants for training programs when available.
 - E. Partner with adjacent communities to adopt compatible policies, plan components, and zoning provisions for battery energy storage system projects. County or regional planning agencies may also advise participating local governments on locally addressing these issues.

2. Model Law

1. 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); [Select one: sections 261-263 of the Town Law / sections 7-700 through 7-704 of the Village Law / sections 19 and 20 of the City Law and section 10 of the Municipal Home Rule Law] of the State of New York, which authorize the [Village/Town/City] to adopt zoning provisions that advance and protect the health, safety and welfare of the community.

2. Statement of Purpose

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

- A. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems;
- B. To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems;
- C. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources; and
- D. To create synergy between battery energy storage system development and [other stated goals of the community pursuant to its Comprehensive Plan].

3. Definitions

As used in this [Article/Chapter], the following terms shall have the meanings indicated:

ANSI: American National Standards Institute

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

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

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

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

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

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

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

- 1) The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
- 2) No other occupancy types are permitted in the building.
- 3) Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
- 4) Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
 - a. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
 - b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

ENERGY CODE: The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

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

NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL): A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

NEC: National Electric Code.

NFPA: National Fire Protection Association.

NON-DEDICATED-USE BUILDING: All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

NON-PARTICIPATING PROPERTY: Any property that is not a participating property.

NON-PARTICIPATING RESIDENCE: Any residence located on non-participating property.

OCCUPIED COMMUNITY BUILDING: Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, daycare facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

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

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

4. Applicability

- A. The requirements of this Local Law shall apply to all battery energy storage systems permitted, installed, or modified in [Village/Town/City] 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. General Requirements

- A. A building permit and an electrical permit shall be required for installation of all battery energy storage systems.
- B. Issuance of permits and approvals by the [Reviewing Board] shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].
- 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 [Village/Town/City] Code.

6. Permitting Requirements for Tier 1 Battery 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. Permitting Requirements for Tier 2 Battery Energy Storage Systems

Tier 2 Battery Energy Storage Systems are permitted through the issuance of a [special use permit] within the [XXXXXXXXXXXXXXXX, XXXXXXXXXXXX, XXXXXXXXXXXX] 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 System shall be:
 - 1) reviewed by the [Code Enforcement/Zoning Enforcement Officer or Reviewing 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, Decommissioning, Site Plan and Development, Special Use and Development, Ownership Changes, Safety, and Permit Time Frame and Abandonment. Applicants shall be advised within [10] business days 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 [Reviewing Board] of the [Village/Town/City] shall have a notice printed in a newspaper of general circulation in the [Village/Town/City] at least [5] days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within [200] feet of the property at least [10] days prior to such a hearing. Proof of mailing shall be provided to the [Reviewing Board] at the public hearing.
 - 3) referred to the [County Planning Department] pursuant to General Municipal Law § 239-m if required.
 - 4) upon closing of the public hearing, the [Reviewing 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 [Reviewing 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. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.

F. Noise. The [1-hour] average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of [60] dBA as measured at the 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) Decommissioning Plan. The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:
 - a. A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;
 - b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
 - c. The anticipated life of the battery energy storage system;
 - d. The estimated decommissioning costs and how said estimate was determined;
 - e. The method of ensuring that funds will be available for decommissioning and restoration;
 - f. The method by which the decommissioning cost will be kept current;
 - g. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
 - h. A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.
- 2) Decommissioning Fund. The owner and/or operator of the energy storage system, shall continuously maintain a fund or bond payable to the [Village/Town/City], in a form approved by the [Village/Town/City] for the removal of the battery energy storage system, in an amount to be determined by the [Village/Town/City], for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant.

- H. Site plan application. 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) A [one- or three-line] electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
 - 4) A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
 - 5) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
 - 6) Name, address, phone number, and signature of the project Applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.
 - 7) Zoning district designation for the parcel(s) of land comprising the project site.
 - 8) Commissioning Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, Battery energy storage system commissioning shall be conducted by a New York State (NYS) Licensed Professional Engineer 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/Zoning Enforcement Officer or Reviewing Board] 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 [Reviewing Board], but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.
 - 13) Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
 - a. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
 - b. Procedures for inspection and testing of associated alarms, interlocks, and controls.
 - c. Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.

- d. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.
- e. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
- f. Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
- g. Other procedures as determined necessary by the [Village/Town/City] 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 for principal structures of the underlying zoning district.
- 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.
- 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 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/Zoning Enforcement Officer] of such change in ownership or operator within [30] days of the ownership change. A new owner or operator must provide such notification to the [Code Enforcement/Zoning Enforcement Officer] 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/Zoning Enforcement Officer] 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. 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. 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 [24] months, 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 [Reviewing Board], within [24] months after approval, [Village/Town/City] may extend the time to complete construction for [180] days. If the owner and/or operator fails to perform substantial construction after [36] months, the approvals shall expire.
- B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for [more than one year]. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the [Village/Town/City] 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. 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 [Village/Town/City].

11. 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.

Questions?

If you have any questions about the Battery Energy Storage System Model Law, please email questions to cleanenergyhelp@nyserda.ny.gov or request free technical assistance at nyserda.ny.gov/Energy-Storage-Guidebook. The NYSERDA team looks forward to partnering with communities across the State.