

BATTERY ENERGY STORAGE SYSTEMS ORDINANCE

PURPOSE. The Purpose of this ordinance is to establish minimum requirements for and regulation of any applicant/developer/owner engaged in the construction, erection, placement, location, maintenance, modification, operation, and/or decommissioning of battery energy storage systems (BESS) in the Town of Saratoga in a manner that preserves and protects the rights, privileges, and property of the Town and its residents, that ensures the protection of the health, safety and welfare of the town's residents, and that provides an opportunity for economic growth and development.

Section 1. Findings and Authority.

(1) Findings. The Wisconsin Legislature has determined that solar energy systems are an important part of the state's renewable energy portfolio. Wisconsin State Statute 66.0401 sets the parameters for the town's regulation of renewable energy systems, including solar. Wisconsin State Statute 66.0401 states local units of government may not regulate solar energy systems unless the ordinance: (1) serves to preserve or protect public health and safety, (2) does not significantly increase the costs of the system or significantly decrease its efficiency, or (3) allows for an alternative system of comparable cost and efficiency.

(2) Authority. This ordinance is adopted under the powers granted to the Town of Saratoga by Wisconsin State Statutes 60.61 – 60.62, and its authority under Wisconsin Statute 66.0401 and 66.0403, and under other authority granted by the Wisconsin Statutes, including the town adoption of village powers under Wisconsin Statute 60.10(2)(C). All subsequent amendments, repeals, or recreations of state statutes relating to this Ordinance are incorporated herein by reference on their effective dates.

(3) Interpretation. The Wisconsin Court of Appeals has held that evaluating an application for a renewable energy system requires a case-by-case approach and that Wisconsin towns may not set a one-size-fits-all scheme of regulatory requirements for solar energy systems. The state statutes require, and the Wisconsin Court of Appeals has also held, town regulatory requirements must be reasonable and based on "substantial evidence."

Section 1.01. Applicability.

(1) This Ordinance applies to all Battery Energy Storage Systems within the Town of Saratoga designed for nominal operation capacity of 1,000 kilowatts (1 megawatt or more).

Section 1.02. Definitions.

(1) Agrivoltaics – A solar energy system co-located on the same parcel of land as agricultural production, including crop production, grazing, apiaries, or other agricultural products or services.

(2) Battery Containment Area- The engineered area, structure, liner, berm, curbing, trench, sump, tank, secondary containment system, or combination thereof designed to prevent the migration of battery electrolyte, contaminated fire-suppression water, cooling water, battery decomposition products, hazardous materials, or other potentially contaminating liquids from a Battery Energy Storage System into soil, groundwater, surface water, stormwater infrastructure or other areas outside the approved containment system.

(3) “Construction activities” means initiation of any construction, land clearing, or land disturbance related to construction, installation, operation, or decommissioning of a solar energy system. Permitted Solar Energy Generating System is the principal land use for the parcel(s) on which it is located.

(4) CPCN – Certificate of Public Convenience and Necessity issued by the Public Service Commission of Wisconsin.

(5) CPCN – Permitted Solar Energy Generating System – A commercial solar energy system of 100 megawatts (MW) or more that is permitted by the Public Service Commission of Wisconsin under its Certificate of Public Convenience and Necessity Permit review process. A CPCN-Permitted Solar Energy Generating System is the principal land use for the parcel(s) on which it is located.

(6) Ground-mount – A solar energy system mounted on a rack or pole that rests on or is attached to the ground. Ground-mount systems can be either accessory or principal uses.

(7) Groundwater Protection Plan- A site specific plan prepared by qualified professionals that identifies groundwater conditions, soil characteristics, battery chemistry, potential contaminants, containment system, drainage controls, emergency release controls, fire-suppression runoff controls, inspection requirements, and response procedures necessary to prevent groundwater contamination from a Battery Energy Storage System

(8) Kilowatt – a unit of power equal to one thousand watts.

(9) Locally Permitted Solar Energy System – means facilities designed for nominal operation at a nameplate capacity of between one and less than 100 megawatts.

(10) Mature Trees – trees that have reached a stage in their growth cycle where they have achieved their full or near-full height, canopy spread, and overall form typical for their species. They are no longer in a rapid growth phase and have well-established root systems, trunks, and branching structures.

(11) Maximum Credible Liquid Release - The largest reasonably foreseeable release of liquid associated with a Battery Energy Storage System, considering the battery chemistry, electrolyte volume, battery configuration, tanks, piping, interconnected equipment, emergency suppression or cooling water, precipitation, and credible equipment failure scenarios, as determined through an engineering analysis's approved by the Town's designated third-party reviewer.

(12) Megawatt – a unit of power equal to one million watts, especially as a measure of the electrical output capacity of a power station.

(13) Owner – the owner of the solar energy system.

(14) Photovoltaic System – A solar energy system that converts solar energy directly into electricity.

(15) Potentially Contaminated BESS Water -Water or other liquid that has contacted battery equipment, electrolyte, damaged battery components, battery decomposition products, fire-suppression systems, emergency cooling systems, or other materials associated with a BESS incident and that has not been demonstrated to be uncontaminated through appropriate evaluation.

(16) Solar Collector – A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy. The collector does not include frames, supports, or mounting hardware.

(17) Solar Energy – Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

(18) Solar Energy System – Equipment which directly converts and then transfers or stores solar energy into usable forms of thermal or electrical energy, including but not limited to a device, array of devices, or structural design feature, the purpose of which is to provide for generation or storage of electricity from sunlight. This includes transmission facilities dedicated to the solar energy system.

(19) Solar Mounting Devices – Racking, frames, or other devices that allow the mounting of a solar collector onto a roof surface or the ground.

(20) Viewshed – a natural or historic environment that is visible from one or more viewing points.

Section 1.03. Application

- (1) Battery Energy systems are a conditional use in all zoning districts subject to certain requirements.
- (2) Registration and Notice of Intent. All battery energy storage systems subject to the primary jurisdiction of the Public Service Commission of Wisconsin (PSCW) shall file a Notice of Intent to Construct with the town no later than five (5) business days after filing a CPCN application with the state.
- (3) Local Coordination Packet. The notice of Intent shall be accompanied by a local Coordination Packet identical to the application filed with the Public Service Commission of Wisconsin. The purpose of this local filing is to facilitate coordination regarding local road use agreements and other agreements, along with emergency services training.

(4) Information Requirements. The Notice of Intent shall contain the following for informational and coordination purpose:

(a) Site Plan. A copy of the site plan submitted to PSCW, showing the location of all arrays, inverters, and substations. If the site plan submitted to the Public Service Commission of Wisconsin does not include the following informational items, then the following information shall be provided:

- i. Existing and proposed improvements
- ii. Existing and proposed structures
- iii. Existing and proposed topography
- iv. Existing and proposed fencing
- v. Existing and proposed utilities
- vi. All above ground and underground components
- vii. Wetlands, waterways, ditches, and underground drainage systems
- viii. Floodplain
- ix. Public roads, access roads, and internal roadways
- x. Access locations and driveways
- xi. Setbacks identified in the site plan
- xii. Utility aid projections
- xiii. Estimate of decommissioning costs by a third-party engineer qualified to make such an estimate.

(b) Power and communication Lines

- i. Power and communications lines between battery energy storage system units shall be placed underground to the extent feasible and as permitted by the serving utility. The main service connection at the utility company right-of-way, and any new interconnection equipment, may be located above ground.
- ii. New power and communications lines running from the on-site system(s) to interconnections with structures off-site shall be buried underground to the extent feasible and as permitted by the serving utility.
- iii. At the discretion of the Town of Saratoga Board, power and communication lines may be allowed to be unburied in the following circumstances:
 - a) When elements of the natural landscape, such as but not limited to shallow bedrock and water courses, interfere with the ability to bury lines.

- b) When elements of existing infrastructure interfere with the ability to bury lines.
 - c) When distance makes underground infeasible.
- iv. An electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, in compliance with National Electrical Code disconnects and overcurrent devices.
- v. 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 any building permits.
- vi. Name, address, and contact information of proposed system installer and the owner and/or operator of the battery energy storage system. The identity of the final system installer shall be submitted prior to issuance of the building permit(s).
- vii. Battery energy storage systems shall comply with the latest published version of the National Fire Protection Association (NFPA) 855, *Standard for installation of Stationary Energy Storage Systems*, as of the date of the submission of the application and applicable UL standards adopted and enforceable in the jurisdiction as amended from time to time, together with the additional groundwater-protection requirements established by this ordinance.

(c) Fire Safety Compliance Plan. The applicant shall document and describe how the fire safety system and its associated controls will function and be maintained in proper working conditions.

- i. The applicant is responsible for ensuring that firefighters of the designated area site-specifically trained and equipped in accordance with current NFPA standards.
- ii. The applicant will have one meeting annually, or as needed, with local responding fire departments, to go over updates related to emergency situations, preparedness, and procedures, and any changes to the operations and Maintenance Manual and Emergency Operations Procedures.

(d) Operations and Maintenance Manual. The applicant shall provide an ongoing maintenance schedule for the battery energy storage system as well as the general upkeep of the property.

(e) Height. Battery energy storage systems shall comply with the building height limitations for principal structures of the underlying zoning district.

(f) Setbacks. Battery energy storage systems shall maintain a minimum 1500-foot setback from residential, business, municipal, or town structure and comply with NFPA 855 shall be followed/adhered to.

(g) Fencing Requirements. Battery energy storage systems, including all mechanical equipment shall be enclosed by an eight (8) foot tall chain link fence with a self-locking gate to prevent unauthorized access.

(h) Roads. Applicants shall avoid damaging public roads and shall be responsible for mitigation of damage to public roads. At the discretion of the Town Board and/or its' de signee a Public Roads Damage Avoidance and Mitigation Plan shall be required and be in accordance with the following standards:

- i. Identification of Potential Roads Usage. The applicant shall identify, in consultation with the Saratoga Town Board or its' designee, all state and local public roads to be used within the Town of Saratoga to transport equipment, parts and material for construction, operation or maintenance of the battery energy storage system and related components.
- ii. Documentation of Road Conditions. Prior to construction, the Town or its designee shall document the current road conditions of the roads identified for use, with all associated costs paid for by the applicant. The engineer shall document road conditions again within thirty (30) days after construction is complete or as the weather permits.

- iii. Road Preparation and Damage. Any road preparation or maintenance necessitated by the proposed battery energy storage system or damage caused by the applicant or its contractors during construction or decommissioning, shall be completed or repaired within a 9-month time period, at the applicant's expense. Emergency repairs will be determined by the Town Board or its designee, which may be necessary to restore traffic on a daily basis.
The applicant shall demonstrate that it has appropriate financial resources to ensure repair of damaged roads.

Section 1.04 Groundwater Protection and Battery Storage Containment

- (1) Because the Town of Saratoga is characterized by highly permeable soils, shallow groundwater-dependent private wells, all Utility-scale Battery Energy Storage Systems shall incorporate engineering controls designed, constructed, operated, maintained, and decommissioned to prevent the release, migration, infiltration or discharge electrolyte, contaminated fire-suppression water, battery decomposition products, hazardous materials, or other contaminants from the BESS area into the soil or groundwater.
- (2) Stormwater Management, Erosion Control, and BESS Emergency Runoff.
Stormwater management shall comply with applicable Wood County and Wisconsin Department of Natural Resources requirements. In addition, the BESS shall be designed and constructed so that fire-suppression water, emergency cooling water, electrolyte, battery decomposition products, or other potentially contaminated liquids generated by a BESS failure or emergency event cannot infiltrate into soil or groundwater or be discharged to a stormwater infiltration facility, wetland, surface water, drainage way, or other receiving area.
The BESS containment and drainage system shall be designed by a Wisconsin-licensed professional engineer and shall be capable of isolating and containing the maximum credible release identified for the proposed battery chemistry and configuration.

(3) Battery Containment Area. The entire area occupied by stationary BESS equipment, including battery enclosures, containers, cabinets, tanks, associated battery equipment, and areas where electrolyte or other battery-related liquids could reasonably be released, shall be constructed as a **controlled containment area**. The containment area shall:

(a) Be constructed on an engineered, low-permeability or impervious surface designed to prevent infiltration to native soil;

(b) Include continuous secondary containment, curbing, berming, trenching, collection structures, or an equivalent engineered containment system sufficient to prevent an uncontrolled release from leaving the BESS containment area.;

(c) Have all joints, seams, penetrations, utility entrances, drains, sumps, and other potential pathways through the containment system sealed or otherwise constructed to prevent the migration of contaminated liquids into underlying soils;

(d) Not discharge directly to soil, groundwater, dry wells, infiltration basins, stormwater infiltration facilities, drainage swales, wetlands, or surface waters;

(e) Be designed by a Wisconsin-licensed professional engineer with demonstrated experience in hazardous-material containment, geotechnical engineering, environmental engineering, or BESS facility design; and

(f) Be constructed using materials demonstrated by the engineer to be chemically compatible with the battery chemistry, electrolyte, suppression agents, and other liquids reasonably expected to be present at the facility;

(4) Containment Capacity. The applicant shall provide calculations prepared and sealed by a Wisconsin-licensed professional engineer demonstrating that the containment system is capable of controlling the **maximum credible liquid release** from the BESS installation. The design shall consider, at a minimum:

(a) The electrolyte or other liquid contents of the largest individual battery, cell module, tank, or other liquid-containing component, as applicable;

- b) The simultaneous release of liquids from interconnected equipment where such release is reasonably foreseeable;
- (c) Fire-suppression water and other water or agents that may be introduced during an emergency;
- (d) Precipitation entering an outdoor containment area;
- (e) Liquids generated during a thermal runaway, battery failure, rupture, or catastrophic equipment failure;
- (f) Liquids generated during maintenance, replacement, repair, or decommissioning; and
- (g) Any other liquid identified by the battery manufacturer, fire protection engineer, environmental professional, or authority having jurisdiction as presenting a potential contamination hazard.

The containment system shall be designed so that a release cannot migrate beyond the controlled containment area before appropriate emergency response and recovery measures can be implemented.

(5) No Uncontrolled Infiltration. Under no circumstances shall contaminated water, electrolyte, suppression water, or other liquid originating from a BESS emergency or failure event be intentionally routed to a stormwater infiltration facility, dry well drainage ditch, infiltration basin, native soil, or other structure or area that allows discharge to groundwater.

Stormwater that has contacted BESS equipment or the BESS containment area shall be considered potentially contaminated until demonstrated otherwise by the responsible environmental professional or as otherwise approved by the Wisconsin Department of Natural Resources.

(6) Fire-Suppression and Emergency Runoff Containment. The BESS site shall include an engineered method for the collection and control of water and other liquids used during fire suppression, emergency cooling, thermal-runaway mitigation, or other emergency response activities.

The Hazard Mitigation Analysis and Emergency Response Plan required by this ordinance shall identify:

- (a) The expected volume and characteristics of emergency suppression water;
- (b) The location and capacity of containment areas, collection points, sumps, tanks, or other control structures;
- (c) The means by which comminuted water will be prevented from entering soil, groundwater, wetlands, surface water, storm sewers, or stormwater infiltration systems;
- (d) The method of temporary storage of contaminated water pending characterization, treatment, recycling, or disposal;
- (e) The party responsible for arranging sampling, characterization, removal, transportation, and lawful disposal of contaminated liquids and materials; and
- (f) Emergency procedures for protecting groundwater following a battery fire, rupture, thermal runaway, spill, or other BESS failure.

The Town may require the applicant to demonstrate the proposed containment system through engineering calculations, modeling, manufacturer data, fire-protection engineering analysis, or other documentation acceptable to the Town's third party reviewer.

(7) Battery Chemistry-Specific Containment. Groundwater protection measures shall be based upon the specific battery chemistry and physical configuration proposed for the BESS. The applicant shall identify each battery chemistry proposed for installation and shall provide current manufacturer safety data, Safety Data Sheets (SDS), UL listing information, electrolyte composition, maximum electrolyte volume, and information regarding decomposition products and emergency suppression considerations. At a minimum, the following requirements shall apply:

- (a) Lithium-ion and Lithium-Metal Batteries. Lithium-ion and lithium-metal BESS installations shall be provided with an engineered containment system capable of preventing migration of electrolyte, battery decomposition products, containment fire-suppression water, cooling water, and other liquids generated during a battery failure or thermal runaway event.

Because lithium-ion battery installations may involve significant quantities of fire-suppression or cooling water even where the individual battery cells do not contain large volumes of free-flowing electrolyte, the containment design shall specifically evaluate **post-fire water management** and shall not rely solely upon containment of liquid electrolyte.

The applicant shall provide the results of applicable UL 9540A testing and the manufacturer's emergency response information to the Town and the fire authority(s) having jurisdiction. The containment and emergency drainage design shall be consistent with the hazards demonstrated by the applicable testing.

(b) Lead-Acid Batteries. Lead-acid BESS installations shall be provided with secondary containment designed for the electrolyte present in the largest battery, cell, module, or interconnected battery group, as applicable.

For vented lead-acid batteries, the containment system shall be capable of controlling sulfuric-acid electrolyte releases and shall include appropriate spill-control and neutralization materials.

For valve-regulated lead-acid batteries, including AGM and gel-cell systems, the containment design shall nevertheless account for electrolyte release from damaged or failed batteries and shall not assume that immobilized electrolyte cannot escape.

Containment materials shall be resistant to sulfuric acid and shall be selected based upon the manufacturer's SDS and engineering compatibility analysis.

(c) Flow Batteries. Flow battery systems, including vanadium redox, zinc-bromine, polysulfide-bromide, and other liquid-electrolyte technologies, shall be provided with containment designed specifically for the full quantity and chemical characteristics of the electrolyte stored in tanks, piping, pumps, cells, and associated equipment.

Where electrolyte is stored in tanks or interconnected vessels, the containment system shall account for the maximum credible release from the largest tank or interconnected system, including rupture of associated piping or equipment.

The applicant shall provide chemical compatibility documentation for all containment liners, coatings, concrete systems, seals, piping penetrations, sumps, tanks, and collection equipment.

(d) Nickel-Cadmium and Other Alkaline Battery Systems. Nickel-cadmium, nickel-metal hydride, nickel-iron, nickel-zinc, and other alkaline electrolyte systems shall be provided with containment and spill-control measures appropriate to the specific electrolyte.

Where potassium hydroxide or other caustic electrolytes are present, containment materials shall be chemically compatible with the electrolyte.

For nickel-cadmium systems, the containment and emergency response plan shall specifically address the potential presence of cadmium-containing materials and contaminated liquids.

(e) Sodium-Based and High-Temperature Battery Systems. Sodium-nickel chloride, sodium based, and other high-temperature battery systems shall be evaluated for specific chemicals, molten material, decomposition products, and suppression-water contaminants that may result from failure or fire.

The containment system shall be designed based upon the manufacturer's failure analysis, SDS information, applicable UL listing and testing, and a professional engineering evaluation.

The applicant shall demonstrate that the containment materials will remain effective under the temperatures and chemical conditions reasonably expected during a failure event.

(f) Aqueous and Other Emerging Battery Chemistries. For Iron-air, zinc-air, zinc-manganese, aqueous, organic-flow, or other emerging battery technologies, the applicant shall submit a chemistry-specific groundwater protection analysis.

The fact that an electrolyte is classified as aqueous, nonflammable, or having reduced fire risk shall not by itself exempt the system from containment requirements.

The analysis shall identify the electrolyte, electrode material, metals, additives, decomposition products, and other substances that could enter groundwater following a catastrophic failure or emergency response event.

(7) Containment Beneath Battery Enclosures. Where BESS equipment is installed in outdoor containers or cabinets the area beneath and immediately surrounding each enclosure shall be constructed so that a release from the enclosure cannot infiltrate into native soil.

Where an enclosure incorporates an integral listed containment system, the applicant shall provide documentation demonstrating the capacity, materials, limitations, and listing of the integral containment system.

Integral containment shall not be considered sufficient where the manufacturer's documentation demonstrated that contaminated fire-suppression water, cooling water or other liquids could escape the enclosure and enter the underlying soil.

Where an integral containment system does not address the full range of potential releases, supplemental site containment shall be required.

(8) Drainage and Collection Systems. Any drains, trench drains, sumps, collection basins, tanks, or piping serving the BESS containment area shall be designed so that contaminated liquids cannot be discharged to groundwater or stormwater infiltration systems.

Collection systems shall include appropriate isolation valves, shutoff mechanisms, or equivalent controls that allow the containment area to be isolated following a battery emergency.

Drainage systems shall be designed so that an emergency responder or authorized operator can prevent discharge from the containment area before opening any outlet to a stormwater or other drainage system.

No automatic drainage system shall be permitted to discharge potentially contaminated BESS liquids directly to the environment without appropriate characterization and authorization.

(9) Construction below the Water Table. BESS containment construction shall be designed to account for the highest known or reasonably anticipated seasonal groundwater elevation. The applicant shall submit a site-specific geotechnical report identifying:

- (a) Existing groundwater elevations;
- (b) Seasonal or high-water-table conditions;
- (c) Soil permeability;
- (d) Soil characteristics beneath the proposed BESS;
- (e) The proposed bottom elevation of the containment system;
- (f) The potential for groundwater contact with the containment structure;
- (g) Measures proposed to prevent groundwater from compromising the containment system; and
- (h) Measures proposed to prevent a battery release from reaching groundwater.

Where the proposed excavation, foundation, containment structure, or other construction would encounter or potentially intercept groundwater, the applicant shall provide a professional engineering analysis and shall obtain all required regulatory approvals before construction.

(10) Prohibition on Direct Discharge. No BESS shall be constructed with a floor drain, trench drain, footing drain, French drain, dry well, infiltration gallery, stormwater infiltration basin, or similar feature that provides an uncontrolled hydraulic connection from the battery containment area to native soil or groundwater.

(11) Construction Inspection and Certification. Prior to placement of batteries into service, the owner shall provide the Town with a certification signed and sealed by the Wisconsin-licensed professional engineer responsible for the containment design stating that:

- (a) The containment system was constructed in accordance with the approved plans;
- (b) The materials used are chemically compatible with the proposed battery chemistry and anticipated emergency liquids;
- (c) All containment joints, penetrations, seams, drains, sumps, valves, and collection systems have been inspected;
- (d) The containment system provides the capacity identified in the approved design;
- (e) No intentional or uncontrolled discharge pathway to soil or groundwater exists from the BESS containment area; and
- (f) The completed installation is consistent with the approved Conditional Use Permit, applicable fire and building codes, NFPA 855, applicable UL listings, and the approved groundwater protection plan.

The Town may require independent third-party inspection or testing prior to energization of the BESS.

(12) Changes in Battery Technology. Any change in battery chemistry, electrolyte, battery enclosure type, containment design, total stored energy, maximum electrolyte volume, fire-suppression system, or other component that could alter the environmental or groundwater risk shall be submitted to the Town for review before implementation. A change that materially alters the groundwater protection characteristics of the facility shall require modification of the Conditional Use Permit before the change is implemented.

(13) Emergency Release and Reporting. Any release of electrolyte, contaminated fire-suppression water, battery-related hazardous material, or other liquid from the BESS containment system that has the potential to affect soil or groundwater shall be reported immediately to the appropriate emergency response and regulatory authorities and to the Town of Saratoga.

The owner/operator shall be responsible for containment, sampling, characterization, cleanup disposal, and environmental restoration associated with any release, to the extent required by applicable law.

The owner/operator shall not resume normal operation following a release that compromises the containment system until the system has been inspected, repaired or replaced as necessary, and certified by a qualified professional that the containment system can perform its intended function.

(14) Financial Assurance for Groundwater Protection. The decommissioning financial assurance required by this ordinance shall include reasonable costs associated with removal and lawful disposal of contaminated soil, contaminated water, damaged battery components, containment materials, and other materials that may require special handling as a result of a BESS failure, fire, spill, or decommissioning activity.

The Town may require the applicant to provide a separate financial assurance mechanism where the Town determines that the potential environmental remediation costs associated with the proposed battery technology warrant additional security.

Section 1.05 Decommissioning Plan

(1) The developer is responsible for the removal of the of the project at the end of its useful life. The site is to be restored to its pre-construction condition to the maximum extent possible, within 12 months of ceasing operations.

(2) A decommissioning plan must be developed, submitted, and approved by the Town prior to the issuance of all permits. The Town shall not unreasonably withhold, delay, or condition such approval. In summary the decommissioning plan is to identify:

- (a) Steps for restoring the site of the project to pre-construction environmental and physical condition to the maximum extent possible;
 - (b) Estimated cost for restoration less the project's estimated salvage value ("Net Cost for Restoration");
 - (c) The decommissioning plan is to be reviewed every five years for the purpose of updating the costs for decommissioning and, if applicable, updating the financial agreement identified in section 1.05. Such updates shall be subject to approval by the Town. The Town shall not unreasonably withhold, delay, or condition such approval.
- (3) An assurance in the form of a bond, letter of credit, or other form, to be established in an agreement between the Town and the applicant to cover the cost of decommissioning as defined in the decommissioning plan and any updates. The cost of the project's estimated salvage value will be identified in the decommissioning plan.

Section 1.06 Severability

- (1) If any section, clause, or provision or portion of this Ordinance is declared unconstitutional or invalid, or unenforceable by final order of a court of competent jurisdiction including all applicable appeals, the remainder of this ordinance shall remain in full force and affect.

Section 1.07 Fines and Forfeitures

- (1) Violations and Non-Compliance. It shall be unlawful for any person, firm, or corporation to construct, install, alter, maintain, or operate a Battery Energy Storage System (BESS) in violation of any provision of this Ordinance, the conditions of any Conditional Use Permit (CUP), or the approved site, safety and decommissioning plans.
- (2) Continuous Violations as Distinct Offences. Each day that a violation is permitted to exist, continue, or recur after proper notification has been served by the Town of Saratoga representative shall constitute a separate, distinct, and independent offense.

- (3) Fines and Penalties. Any person, firm, or corporation found in violation of this Ordinance shall be subject to a civil forfeiture according to the following schedule:
- (a) First notice of Violation: A written warning detailing the specific breach and providing a strict 10-day cure period. If the violation introduces an immediate hazard to public health or safety, the cure period shall be reduced to a maximum of 24 hours at the discretion of the Fire Chief having jurisdiction.
 - (b) Subsequent Continuous Violations: Following the expiration of the cure period, a civil penalty of not less than \$1,000 and not more than \$5,000 per day shall be assessed for each distinct offense.
 - (d) Intentional or Willful Negligence: If it is determined that the operator willfully bypassed safety management protocols, intentionally disabled thermal monitoring equipment, or failed to immediately report a critical tier system hazard, the penalty shall be a maximum of \$10,000 per day, alongside immediate suspension of the facility's operating permit.
- (4) Emergency Cease and Desist Powers. The Fire Chief or Town representative is authorized to issue an immediate Cease Operations Order or Stop Work Order without prior notice if an imminent threat to public health, safety, or welfare is identified.
- (a) Scope: Imminent threats include, but are not limited to, unmitigated battery cell degradation, off-gassing, failure of fire suppression systems, or unapproved toxic material storage.
 - (b) Penalty for Defiance: Any operation of the facility while an active Cease Operations or Stop Work Order is in place shall bypass standard cure periods and automatically incur a non-negotiable penalty of \$10,000 per day.
- (5) Forfeiture of Financial Assurance (Decommissioning & Maintenance). If the operator fails to correct a violation within 30 calendar days of a formal notice, or completely abandons the facility for a continuous period of 180 days, the Town reserves the absolute right to declare the project in default and execute a forfeiture against the Decommissioning Performance Bond or Letter of Credit held by the Town.
- (a) Municipal Entry: Upon forfeiture, the Town, its employees, or its designated contractors shall have the right of entry onto the property to dismantle, store, sell, or dispose of the BESS components.

- (b) Fund Allocation: Forfeited funds will be used directly to cover all costs of hazardous waste removal, battery cell recycling, site stabilization, and environmental soil remediation.
- (6) Recovery of Enforcement, Technical, and Legal Costs. In addition to the monetary penalties stated herein, the Municipality shall be entitled to recover from the violating operator:
 - (a) All reasonable attorney’s fees, court costs, and legal expenses incurred during enforcement actions.
 - (b) All independent expert consultation fees, including specialized electrical or chemical engineering reviews required to verify compliance.
 - (c) The full cost of municipal emergency services deployment (including local volunteer or structural fire departments and specialized HAZMAT units) responding to an incident caused by system failure or operator negligence.

Adopted this 16th of September 2026.

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