LOCAL LAW NO. 5 - 2026

LOCAL LAW AMENDING THE DEWITT TOWN CODE CHAPTER 192, BEING LOCAL LAW NO. 6 OF 2008, AS HAS PREVIOUSLY BEEN AMENDED, TO REPEAL CHAPTER 192, ARTICLE XXIII OF THE DEWITT TOWN CODE ENTITLED "MORATORIUM ON BATTERY ENERGY STORAGE SYSTEMS," BEING LOCAL LAW NO. 6 OF 2025, AND ALL OF ITS PROVISIONS AND SUBSECTIONS, IN ITS ENTIRETY, AND TO ENACT A NEW CHAPTER 192, ARTICLE XXIII OF THE DEWITT TOWN CODE ENTITLED "BATTERY ENERGY STORAGE SYSTEMS"

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

Section 1: The Town of DeWitt Town Code Chapter 192, being Local Law No. 6 of 2008, as has previously been amended, is hereby further amended to repeal Chapter 192, Article XXIII of the DeWitt Town Code entitled "Moratorium on Battery Energy Storage Systems," being Local Law No. 6 of 2025, and all of its provisions and subsections, in its entirety, and to enact a new Chapter 192, Article XXIII of the DeWitt Town Code entitled "Battery Energy Storage Systems," as follows:

ARTICLE XXIII BATTERY ENERGY STORAGE SYSTEMS

§192-136 Authority.

This Local Law regulating the location, construction, operation, installation, implementation and use of Battery Energy Storage Systems in the Town of DeWitt 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), and New York State Municipal Home Rule Law §10, which authorize the Town of DeWitt to adopt zoning provisions which advance and protect the public health, safety and welfare of the community.

§192-137 Statement of Purpose and Intent.

This Local Law is adopted to create reasonable rules and regulations for the location, construction, operation, installation, implementation and use of Tier 1, Tier 2 and Tier 3 Battery Energy Storage Systems, as defined herein, to benefit property owners within certain zoning districts in the Town of DeWitt, as set forth herein, with a primary focus and intent to preserve and protect the public health, safety, welfare and quality of life for Town of DeWitt residents, business owners, and visitors.

Specifically, the Town of DeWitt intends to ensure compatible land uses in the vicinity of areas that may reasonably be impacted by the effects of Battery Energy Storage Systems, to mitigate the impacts of Battery Energy Storage Systems on important environmental resources such as

agricultural lands, forests, wildlife and other protected resources, and to create synergy between the location, construction, operation, installation, implementation and use of Battery Energy Storage Systems and the goals of the Town of DeWitt community at large pursuant to the Town of DeWitt's Comprehensive Plan.

§192-138 Definitions.

For the purposes of this Local Law, the following terms shall have the meanings set forth herein:

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 Local 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, Tier 2 or Tier 3 Battery Energy Storage System, as follows:

A. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to eighty (80) kilowatt-hours (kWh), and, if in a room or enclosed area, consist of only a single energy storage system technology. Tier 1 Battery Energy Storage Systems are "behind the meter" systems, as defined herein, only.

B. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity more than 80 kWh and less than or equal to six hundred (600) kWh, and, if in a room or enclosed area, consist of only a single energy storage system technology. Tier 2 Battery Energy Storage Systems are "behind the meter" systems, as defined herein, only.

C. Tier 3 Battery Energy Storage Systems have an aggregate energy capacity greater than 600 kWh or are comprised of more than one storage battery technology in a room or enclosed area. Tier 3 Battery Energy Storage Systems may be "behind the meter" or "front of the meter" systems, as defined herein.

BEHIND THE METER

Customer-sited stationary Battery Energy Storage Systems that are connected to the distribution system on the customer's side of the utility's service meter.

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 state and local code requirements.

DECOMMISSIONING

A systemic process that provides documented confirmation that a Battery Energy Storage System has been safely disassembled, with all components removed or recycled according to the intended end-of-life criteria and in compliance with applicable state and local code requirements.

DEDICATED-USE BUILDING

A building that is built for the primary intention of housing battery equipment, is classified as Group F-1 occupancy as defined in the New York State Building Code, and complies with all of the following:

A. The only use of the building is battery energy storage, energy generation, and/or other electrical grid-related operations;

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

C. Occupants in the rooms and areas containing Battery Energy Storage Systems are limited to personnel that operate, maintain, service, test and/or repair the Battery Energy Storage System and other energy systems; and

D. Administrative and support personnel are permitted in areas within the buildings that do not contain Battery Energy Storage Systems, provided that the areas do not occupy more than ten (10) percent of the building area of the story in which Battery Energy Storage Systems are located and that a means of egress from the administrative and support use areas to the public way is provided that does not require occupants to traverse through areas containing Battery Energy Storage Systems or other energy systems or related 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 established in 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.

FRONT OF THE METER

Battery Energy Storage Systems that are installed on the utility side of the utility's service meter.

NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL)
A United States 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.

NON-DEDICATED-USE BUILDING
All buildings that contain a Battery Energy Storage System and do not comply with the requirements for Dedicated-Use Building set forth herein.

OCCUPIED COMMUNITY BUILDING
Any building in Occupancy Group A, B, E, I, or R, as defined in the New York State 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 owner of the Battery Energy Storage System or his/her designee, 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.

§192-139 Applicability.

A. This Local Law shall apply to all Battery Energy Storage Systems permitted, located, constructed, operated, installed, implemented, and/or used in the Town of DeWitt as of the Effective Date of this Local Law, excluding general maintenance and repair.

B. Battery Energy Storage Systems permitted by the Town of DeWitt and located, constructed, operated, installed, implemented, and/or used in the Town of DeWitt prior to the Effective Date of this Local Law shall not be required to meet the requirements of this Local Law.

C. This Local Law shall apply to modifications to or retrofits or replacements of an existing Battery Energy Storage System.

§192-140 Applications for Battery Energy Storage Systems

A complete application for the location, construction, operation, installation, implementation, and/or use of a Battery Energy Storage System shall be submitted to the Town of DeWitt Department of Planning and Zoning (Department) for review. An application shall be deemed complete upon a determination by the Department that the application addresses all relevant provisions and requirements of this Section. Applications for Battery Energy Storage Systems that

will have a utility connection shall include a signed interconnection agreement or letter of intent with the interconnecting utility company.

§192-141 Requirements for Tier 1 Battery Energy Storage Systems.

Tier 1 Battery Energy Storage Systems are permitted in R-0, R-1, R-2 and R1A zoning districts as an accessory use and/or structure to a primary residential use upon the issuance of a development permit by the Department.

Tier 1 Battery Energy Storage Systems are permitted in all non-residential zoning districts of the Town as an accessory use and/or structure to a primary structure or use, upon Site Plan Review pursuant to **§192-122** of the Zoning Code of the Town of DeWitt and issuance of a development permit by the Department.

The Tier 1 Battery Storage Systems are prohibited in the front yard.

§192-142 Requirements for Tier 2 Battery Energy Storage Systems.

Tier 2 Battery Energy Storage Systems shall be permitted only in the Industrial Zoning District as an accessory use and/or structure to a primary use on the lot, subject to the following requirements:

A. Site plan review and approval by the Town of DeWitt Planning Board pursuant to the regulations and procedures set forth in **§192-122** of the Zoning Code of the Town of DeWitt and further as set forth in herein and in **§192-145**.

B. Issuance of a development permit by the Department.

C. Residential setback requirement. No Tier 2 Battery Energy Storage System may be permitted within 100 feet of the property line of: a) a lot containing a residential dwelling(s) or public park, or b) a residentially zoned lot.

§192-143 Requirements for Tier 3 Battery Energy Storage Systems.

Tier 3 Battery Energy Storage Systems shall be permitted in the Industrial Zoning District as a primary use or as an accessory use and/or structure to a primary use on the lot, subject to the following requirements:

A. Site plan review and approval by the Town of DeWitt Planning Board pursuant to the regulations and procedures set forth in **§192-145** herein and in **§192-122**; and

B. Issuance of a Specific Use Permit by the Town of DeWitt Zoning Board of Appeals pursuant to the regulations and procedures set forth in **§192-123**.

C. Issuance of a development permit by the Department.

D. Residential setback requirement. Any Tier 3 Battery Energy Storage System must be at least one thousand (1,000) feet away from any lot with a dwelling or public park use or residential district boundary line as measured from the nearest lot lines.

E. Wetland setback requirement. A Tier 3 Battery Energy Storage System must be at least one hundred (100) feet away from any state or federal wetlands.

§192-144 Permitting Requirements for Tier 1, Tier 2, and Tier 3 Battery Energy Storage Systems.

In addition to the application procedures and requirements for development permit review set forth in **§94-4** and the Uniform Code, any development permit application for the location, construction, operation, installation, implementation and/or use of a Battery Energy Storage System, excluding single- and two-family residential covered in the NYS Residential Code, shall include the following:

A. Utility Lines and 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.

B. Signage.

1. Signage shall be in compliance with the American National Standards Institute (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. Pursuant to 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.

C. Vegetation and tree cutting. Areas within ten (10) feet on each side of 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 shall be minimized to the extent possible.

D. Noise. The 1-hour average noise generated from Battery Energy Storage Systems, components and associated ancillary equipment shall not exceed a noise level of sixty (60) dBA as measured at all lot lines of the parcel on which the Battery Energy Storage System is located. Applicants shall 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 lot on which the Battery Energy Storage System is located to demonstrate compliance with this standard. No momentary noise generation shall exceed 90 dBA.

E. Setbacks. Properties on which Battery Energy Storage Systems are located, constructed, operated, installed, implemented, and/or used shall comply with the setback requirements of the zoning district they are located in, except for the additional residential setback requirement for Tier 3 Battery Energy Storage Systems set forth in **§192-143** herein.

F. Height. Battery Energy Storage Systems shall comply with the building height limitations for principal structures of the zoning district in which the lot is located, with maximum height not to exceed 15 feet.

G. Commissioning Plan. The applicant shall submit a Commissioning Plan documenting and verifying that the Battery Energy Storage 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, it shall be conducted by a New York State Licensed Professional Engineer after the installation is complete but prior to final inspection and approval.

1. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning.

2. 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 the Department prior to final inspection and approval and maintained at an approved on-site location;

3. A service record log form shall be retained on site that lists the schedule for all required servicing and maintenance actions and space for logging such actions that are completed over time.

H. 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:

1. A narrative description of the activities to be accomplished, including who will perform which activities 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;

2. Disposal of all solid waste and hazardous waste in accordance with local, state and federal waste disposal regulations;

3. The anticipated life of the Battery Energy Storage System;

4. The estimated decommissioning costs and how said estimate was determined. Decommissioning costs shall use the gross cost of removal and hazardous material disposal and shall exclude any scrap value of the batteries;

5. The method of ensuring that funds will be available for decommissioning and restoration;

6. The method by which the decommissioning cost will be kept current;

7. 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

8. Full environmental remediation, including but not limited to stripping contaminated soil, neutralizing toxic fire suppression runoff, and restoring the site to original baseline environmental conditions.

9. 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.

I. Fire Safety Compliance Plan documenting and verifying that the system and its associated controls and safety systems are in compliance with the Uniform Code;

J. Operation and Maintenance Manual describing 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;

K. Emergency Operations Plan for Tier 2 and Tier 3 Battery Energy Storage Systems. An Emergency Operations Plan meeting all requirements as set forth in the Uniform Code shall be provided shall be approved as a part of development permit review with a copy provided to the Battery Energy Storage System owner and the Town of DeWitt Fire Marshall. A permanent copy shall be placed in an approved location to be accessible to facility personnel, fire code officials and emergency responders.

L. Decommissioning Fund.

1. The owner and/or operator of a Battery Energy Storage System shall continuously maintain a cash escrow balance with the Department for purposes of financing the Decommissioning Plan, in an amount to be determined by the Town, for the period of the life of the associated facility. Every five (5) years the estimated decommissioning costs shall be re-evaluated and the cash escrow balance shall be modified accordingly.

2. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash escrow deposit shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash escrow deposit shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

M. Insurance. The applicant and/or owner shall maintain a current insurance policy to cover the installation and operation of Tier 3 projects at all times in the minimum amount of $5,000,000 property and personal liability coverage and provide proof of such policy to the Town on an annual basis.

N. Limited site access agreement. The Town of DeWitt shall require all applicants to enter into a limited site access agreement upon the posting of cash escrow to ensure the Town may access the property in the event the Town is forced to act to decommission the project. The agreement shall be prepared by the Town Attorney in a form and content acceptable to the Town Board.

§192-145 Site Plan Review Requirements.

A. In addition to the application procedures and requirements for Site Plan Review set forth in **§192-122**, any site plan review application for a Tier 2 or Tier 3 Battery Energy Storage System shall include the following:

1. Property lines and physical features, including roads, for the project site;

2. Proposed changes to the landscape of the site, grading, stormwater drainage, vegetation clearing and planting, exterior lighting, and screening vegetation or structures;

3. Documentation that appropriate water infrastructure and supply are available at the project site for fire protection.

4. A three-line electrical diagram detailing the Battery Energy Storage System layout, associated components, and electrical interconnection methods, with all NEC-compliant disconnects and over current devices;

5. 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 a development permit;

6. Name, address, phone number 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 a development permit;

7. Zoning district designation for the parcel(s) of land comprising the project site;

8. Decommissioning Plan as set forth in **§192-144** herein;

9. Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Town of DeWitt Planning Board;

10. Engineering documents stamped and signed by a New York State Licensed Professional Engineer to be submitted before site plan approval and issuance of a development permit; and

11. The following additional requirements for Site Plan Review for the location, construction, operation, installation, and implementation shall apply:

    a. Fencing requirements. Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by fencing as determined by the Planning Board..

    b. Lighting. Lighting shall be limited to that minimally required for safety and operational purposes and shall conform to the rules and regulations set forth in Chapter 117 of the DeWitt Town Code entitled "Lighting, Outdoor" except that maximum pole height shall not exceed 5 feet above the height of the Battery Energy Storage System structure.

    c. Screening and visibility. Battery Energy Storage Systems shall have views minimized from adjacent properties and public rights-of-way, to the extent reasonably practicable using architectural features, earth berms, landscaping and/or other screening methods that will harmonize with the character of the property and surrounding area and not interfere with ventilation or exhaust ports. For purposes of review of adequate screening and visibility, the applicant is to provide, as determined by the Planning Board:

        i. Viewshed analysis

        ii. Technically accurate photographic simulations illustrating the operational facility

        iii. Evaluation of potential visual impact to public resources

        iv. Line of sight cross sections

    d. A floodplain analysis shall be provided for any proposed Battery Energy Storage System proposed in a floodplain, and any flood risk identified by the Planning Board must be mitigated. Battery Energy Storage Systems located in a 100-year floodplain shall have a finished floor elevation at or above the base flood elevation plus two feet.

§192-146 Ownership Changes.

If the owner of a Battery Energy Storage System(s) changes or the owner of the relevant property changes, the Specific Use Permit associated with such Battery Energy Storage System(s) shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the Specific Use Permit, Site Plan Approval, and Development Permit and with the approval of the Zoning Board of Appeals in the form of an amendment to the Specific Use Permit. The successor owner or operator shall provide written notification to the Department of such change in ownership and make application to the Zoning Board of Appeals within thirty (30) days of the ownership change. Failure of the successor owner or operator to provide written notification of ownership change and make application to the Zoning Board of Appeals as set forth herein shall result in complete and total nullification of the Specific Use Permit, Site Plan Approval, Development Permit, and all other associated local approvals of the Battery Energy Storage System.

§192-146.1 Safety.

A. System Certification. Battery Energy Storage Systems and equipment shall be listed by a NRTL 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; and/or

    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 Town of DeWitt Fire Marshall and any other relevant emergency services department.

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.

D. Tier 3 Battery Energy Storage Systems, components, and associated ancillary equipment shall be inspected every year by a registered professional engineer or a special expert meeting the requirements of the Uniform Code. Documentation of such inspection shall be provided to the Department. Failure to inspect systems as required shall invalidate the Specific Use Permit.

§192-146.2 Abandonment of Tier 2 or Tier 3 Battery Energy Storage Systems.

A Tier 2 or Tier 3 Battery Energy Storage System shall be considered abandoned when it ceases to operate consistently for a period of more than one (1) year. If the owner or operator fails to comply with the decommissioning requirements set forth in §192-144(J) upon abandonment, the Department may, at its discretion and upon seven (7) consecutive days of written notice to the property owner, enter the property and utilize the available cash escrow balance for the removal of a Tier 2 or Tier 3 Battery Energy Storage System and restoration of the site in accordance with the Decommissioning Plan as a matter of public health and safety.

§192-146.3 Enforcement.

A violation of this Chapter shall be an offense punishable by a fine not to exceed one thousand dollars ($1,000) per day. Each day on continuing violation shall be considered to be a separate and distinct violation.

§192-146.4 Severability.

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision or phrase of this Local Law, 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.

Section 2: Local Law No. 6 of 2008, as amended, remains in full force and effect except as hereinabove amended.

Section 3: This Local Law shall take effect immediately upon posting and publication as required by law and filing with the Secretary of State.