TOWN OF PENDLETON

Local Law Intro. No. ____ of 2025

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A Local Law to Amend the Town of Pendleton Code to Regulate Battery Energy Storage Systems

Be it hereby enacted by the Town Board of the Town of Pendleton as follows:

Section 1: The Title of Chapter 247, Article IX, of the Town of Pendleton Code shall be amended and replaced to read in its entirety as follows:

ARTICLE IX

Cellular Telecommunications Facilities; Wind Energy Conversion Systems; Solar Energy Systems; Battery Energy Storage Systems

Section 2: Chapter 247, Article IX, of the Town of Pendleton Code shall be amended to add Section 247-72A, Battery energy storage systems, to read in its entirety as follows

§ 247-72A. Battery energy storage systems.

A. Title. This section shall be known and may be recited as the "Battery Energy Storage Systems Ordinance of the Town of Pendleton."

B. Purpose. The purpose of this section is to provide standards for the safe siting, installation, and operation of battery energy storage systems within the Town. The Town of Pendleton is primarily responsible for promoting the health, safety, and general welfare of its residents and the environmental quality of its lands. This section is designed to preserve and protect the quality of life and the quality of the environment within the borders of the Town by ensuring that battery energy storage systems are located, constructed, and operated in a manner that is compatible with surrounding land uses, protective of important natural resources, and consistent with the goals and policies of the Town's Comprehensive Plan.

C. 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); sections §§ 261 through 263 of the Town Law and section § 10 of the Municipal Home Rule Law of the State of New York, which authorize the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community.

D. Applicability. The provisions of this section shall apply to all battery energy storage systems permitted, installed, or modified within the Town of Pendleton after the effective date of this Local Law, except for routine maintenance or general repair. Battery energy storage systems constructed or installed prior to the effective date of this Local Law may continue to operate as they presently exist and shall not be required to comply with the requirements of this section. Any modification, retrofit, or replacement of an existing battery energy storage system that increases the system's designed discharge duration or power rating shall be subject to the standards and procedures set forth in this section.

E. Definitions. As used in this § 247-72A, the following terms shall have the meanings indicated:

ANSI — American National Standards Institute

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

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

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

(1) Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600 kWh and, if in a room or enclosed area, consist of only a single energy-storage system technology. The 600 kWh threshold corresponds to the capacity distinction adopted in the Fire Code of New York State (2025) and NFPA 855 (2023), which treat systems at or below this size as lower-risk installations suitable for reduced spacing, fire-protection, and engineering requirements.

(2) Tier 2 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. Systems above 600 kWh fall within a higher-hazard category under FCNYS and NFPA 855 due to increased energy density, more complex thermal-runaway propagation dynamics, and the need for enhanced fire-safety engineering, separation distances, and emergency-response measures.

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.

DECOMMISSIONING — A systematic process for the removal of the battery energy storage system from the property and the restoration of the property at abandonment or closure of the system, including financial responsibility for its removal.

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

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

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

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

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

(a) The areas do not occupy more than 10% 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 Electrical 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, day-care 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.

F. General Requirements.

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

(2) Issuance of permits and approvals by the Town 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”).

(3) 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 Town Code.

G. Permitting Requirements.

(1) 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.

(2) Tier 2 Battery Energy Storage Systems shall be permitted only within the CO2 Medium Commercial, LI Light Industrial, and SLI Special Light Industrial Districts upon the issuance of a special use permit by the Town Board, following site plan approval by the Planning Board pursuant to § 247-54. Such systems shall be subject to the Uniform Code and the site plan application requirements set forth in this section. Tier 2 Battery Energy Storage Systems are not permitted by right or by special use permit in the R-1 and R-2 Residential Zoning Districts or the CO1 Light Commercial District.

H. Applications for the installation of Tier 2 Battery Energy Storage System shall be:

(1) Reviewed by the Code Enforcement Officer for completeness. An application shall be complete when it addresses all matters listed in this Local Law including, but not necessarily limited to

(a) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and

(b) 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) Required to utilize modular, UL 9540A-tested containerized battery energy storage systems to ensure protection from electrical, mechanical, and environmental hazards.

(3) Subject to a public hearing to hear all comments for and against the application. The Pendleton Planning Board shall have a notice printed in a newspaper of general circulation in Pendleton at least five days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within 400 feet of the property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at the public hearing.

(4) Referred to the Niagara County Planning Board pursuant to General Municipal Law § 239-m, if required.

(5) Acted upon by the Planning Board within sixty-two (62) days of the close of the public hearing, which action may include approval, approval with conditions, or denial; provided, however, that the sixty-two-day period may be extended upon the consent of both the Planning Board and the Applicant.

I. 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.

J. 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.

K. 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.

L. Vegetation and tree-cutting. Areas within 30 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.

M. 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 shall submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant shall 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.

N. 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 Town of Pendleton, in a form approved by the Town Board and Town Attorney for the removal of the battery energy storage system, in an amount to be determined by the Town Board, 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.

O. Post-Incident Structural Stabilization, Cleanup, and Environmental Remediation.

(1) Owner/Operator Responsibility.

(a) In the event of fire, explosion, thermal-runaway event, release of hazardous materials, or any other catastrophic incident involving a battery energy storage system, the owner and/or operator shall be solely responsible for performing all necessary structural stabilization, partial or full demolition, debris removal, and environmental remediation required to return the site and any affected surrounding areas to safe and stable pre-incident conditions.

(2) Structural Stabilization and Demolition.

(a) The owner and/or operator shall promptly undertake all work necessary to:

[1] secure, stabilize, or demolish fire-impacted structures to allow safe entry of emergency personnel, investigators, and contractors;

[2] abate structural hazards, collapse hazards, and electrical hazards; and

[3] prevent further migration of contaminants or unsafe conditions.

(3) Cleanup and Removal of Damaged BESS Components.

(a) Damaged, degraded, or compromised battery modules, racks, containers, wiring, inverters, associated electrical equipment, and any other BESS components shall be removed and disposed of in accordance with all applicable local, state, and federal solid and hazardous waste laws, including but not limited to:

[1] RCRA hazardous waste requirements;

[2] New York State solid and hazardous waste management regulations;

[3] Transportation requirements for damaged lithium-ion batteries; and

[4] any applicable Uniform Code or fire code requirements.

(4) Environmental Remediation.

(a) The owner and/or operator shall fully remediate all environmental damage resulting from the incident, including but not limited to:

[1] soil, groundwater, or surface‑water contamination caused by battery breakdown products, extinguishing agents, fire suppression materials, or hazardous substances;

[2] chemical residues, particulates, vapors, or contaminated runoff; and

[3] removal and disposal of all contaminated soils, sorbents, absorbents, building materials, and personal protective equipment generated during response operations.

(5) Post-Incident Reporting and Plan Submission.

(a) Within ten (10) business days of an incident, the owner and/or operator shall provide the Town, the local fire department, and the Code Enforcement Officer with:

[1] a preliminary incident report;

[2] a structural stabilization plan;

[3] a debris-management and waste-disposal plan; and

[4] an environmental remediation plan prepared by a qualified environmental professional.

(6) Financial Assurance.

(a) The decommissioning fund required under §247-72A(N)(2) shall also serve as a financial assurance mechanism for post-incident structural stabilization, debris removal, and environmental remediation. The Town may draw upon the fund if the owner/operator fails to timely perform the required work.

(7) Town Authority.

(a) If the owner and/or operator fails to complete post-incident stabilization, cleanup, or remediation within a time period determined by the Town, the Town may enter the property, perform such work as necessary to protect public health, safety, and the environment, and recover all associated costs from the owner and/or operator, including drawing upon any posted security.

P. Site plan application. For a Tier 2 Battery Energy Storage System requiring a 24Permit, site plan approval shall be required. Any site plan application shall include the following information:

(1) Property lines and physical features of the project site, including roads.

(2) Proposed changes to the landscape, including 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 overcurrent devices.

(4) A preliminary equipment specification sheet documenting the proposed battery energy storage system components, inverters, and associated electrical equipment to be installed. A final equipment specification sheet shall be submitted prior to the issuance of a building permit.

(5) The name, address, and contact information of the proposed or potential system installer and the owner and/or operator of the battery energy storage system. Information for the final system installer shall be submitted prior to the issuance of a building permit.

(6) The name, address, phone number, and signature of the Applicant and of all property owners, demonstrating consent to the application and to the use of the property for the battery energy storage system.

(7) The zoning district designation for all parcel(s) comprising the project site.

(8) A Commissioning Plan documenting and verifying that the system and its associated controls and safety systems are in proper working condition in accordance with the Uniform Code. Where required by the Uniform Code, commissioning shall be conducted by a New York State Licensed Professional Engineer after installation but prior to final inspection and approval. A corrective action plan shall be developed for any issues permitted to remain open after commissioning. A report describing commissioning results and initial acceptance testing shall be provided to the Planning Board prior to final inspection and approval and maintained at an approved on-site location.

(9) A Fire Safety Compliance Plan documenting and verifying that the system and its associated controls and safety systems comply with the Uniform Code.

(10) An Operation and Maintenance Manual describing continuing maintenance and property upkeep, as well as design, construction, installation, testing, and commissioning information, consistent with all Uniform Code requirements.

(11) Erosion and sediment control and stormwater management plans, prepared to New York State Department of Environmental Conservation standards, if applicable, and to such additional standards as may be established by the Planning Board.

(12) Engineering documents signed and sealed by a New York State Licensed Professional Engineer prior to issuance of a building permit or final approval by the Planning Board, though not required at the time of initial application.

(13) A Hazard Mitigation Analysis (HMA) and fire-risk assessment, developed at an early stage of design in accordance with NFPA 855 Annex G and the Fire Code of New York State (Chapter 12, Section 1207). Town officials or their designees shall participate in the process, with emphasis on the following issues:

(a) A detailed analysis of available water supply for fire suppression and the intended suppression-system design, including capacity for at least two external fire hose streams for fire department use if intervention becomes necessary.

(b) Emergency equipment availability.

(c) Availability of operator supervision in a timely fashion during an emergency in accordance with the Uniform Code and any response-time requirements in this section.

(d) Capability and required actions of local first responders.

(e) Environmental considerations in the event of an emergency.

(f) Maintenance of the HMA as a “living document”, updated to reflect changes in operation, configuration, or response requirements.

(g) A peer review of the Hazard Mitigation Analysis, including commentary on additional possible risks derived from review of engineering drawings, and refreshed post-installation to account for any changes made during construction.

(14) Emergency Operations Plan. An Emergency Operations Plan shall be prepared and approved, and a copy shall be provided to the system owner, the local fire department, and the local fire code official. A permanent copy shall also be maintained in an approved on-site location 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, and isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injury, and procedures for safe start-up following the cessation of emergency conditions.

(b) Procedures for inspection and testing of associated alarms, interlocks, and controls.

(c) Procedures for responding to notifications from the Battery Energy Storage Management System, where provided, that may indicate potentially dangerous conditions, including shutting down equipment, summoning service and repair

personnel, and providing required notification to fire department personnel in the event of a system failure or potentially hazardous condition.

(d) Emergency procedures to be followed in the event of fire, explosion, release of liquids or vapors, damage to critical components, or other dangerous conditions, including alarm activation, notification of the fire department, evacuation of personnel, de-energizing of equipment, and fire-control measures.

(e) Response considerations comparable to a safety data sheet (SDS) addressing responder safety, extinguishment, and hazard recognition where an SDS is not otherwise required.

(f) Procedures for the safe handling, removal, and management of battery energy storage system equipment damaged in a fire or other emergency, including maintaining current contact information for personnel qualified to remove and secure damaged equipment.

(g) Additional procedures determined necessary by the Town to provide, to the greatest extent practicable, maximum protection of the health, safety, and welfare of occupants, neighboring properties, and emergency responders.

(h) Procedures and schedules for conducting drills and training on the Emergency Operations Plan, including training for local first responders on plan contents and appropriate response protocols.

(i) Any additional information required by the Planning Board to ensure adequate protection of the public health, safety, and welfare.

Q. 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.

(a) Clearances from residential property lines

[1] Any self-contained unit should be no less than 30 feet from any property line.

[2] Any unit should be no less than 15 feet from any adjacent unit, or 20 feet from any electrical infrastructure.

[3] The site shall be easily accessible by any construction and maintenance crews, as well as accommodate any firefighting apparatus and their respective turning radii.

(b) An absolute clearance of 750 feet from any occupied community building, disaster response facilities, critical environment area, combustible storage facility, or similarly sensitive locations.

(c) An absolute clearance of 500 feet from any critical transportation infrastructure.

(2) Zoning.

(a) Lots shall have a minimum of one acre in size, contiguous.

(3) Height. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations for principal structures of the underlying zoning district.

(4) 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.

(5) 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.

R. 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 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 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 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. The specific decommissioning fund provisions and requirements of Section N(2) above shall have the same force and effect upon any new owner or operator of the battery energy storage system.

S. Safety.

(1) 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:

(a) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications),

(b) UL 1642 (Standard for Lithium Batteries),

(c) UL 1741 or UL 62109 (Inverters and Power Converters),

(d) Certified under the applicable electrical, building, and fire prevention codes as required.

(e) 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.

(f) NFPA 855, Standard for the Installation of Stationary Energy Storage System, 2020 Edition.

T. Site Access. Battery energy storage systems shall be maintained in good condition and in accordance with all applicable codes and industry standards. Site access shall be maintained at all times, including snow and ice removal, to a level acceptable to the local fire department and, where applicable, the local ambulance corps.

(1) Required working space clearances shall be maintained around all battery energy storage system components and ancillary equipment, and all electrical circuitry shall be contained within weatherproof enclosures bearing an environmental rating appropriate for the type of exposure, in compliance with NFPA 70.

U. Permit Time Frame and Abandonment.

(1) The special use permit issued by the Town Board and the site plan approval granted by the Planning Board for a battery energy storage system shall be valid for an initial period of twenty-four (24) months solely for purposes of construction, provided that a building permit is issued and construction is commenced. If construction is not completed in accordance with the final, approved site plan within twenty-four (24) months, the Town Board may, in its discretion, grant extensions not to exceed an additional twelve (12) months in total. In no event shall the total construction period exceed thirty-six (36) months from the date of approval, and all approvals shall automatically expire at the end of the thirty-six-month period if substantial construction has not been completed. Upon completion of construction and commencement of commercial operation, the special use permit shall thereafter be subject to annual review by the Town Board in accordance with the Town Code. Following each annual review, the Town Board may confirm compliance, impose reasonable conditions, establish a cure period for any violation, or revoke the special use permit for continued noncompliance.

(2) A battery energy storage system shall be deemed abandoned when it ceases regular operation for a period exceeding one (1) year. Upon abandonment, the owner and/or operator shall commence decommissioning in accordance with the approved

decommissioning plan. If the owner and/or operator fails to comply, the Town may enter the property and utilize any bond and/or security to remove the Tier 2 Battery Energy Storage System and restore the site consistent with the decommissioning plan.

V. 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 Pendleton zoning or land use regulations.

W. 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.

Section 3: Severability. Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such a decision shall not affect the validity of this Local Law as a whole or any part thereof other than the parts so decided to be unconstitutional or invalid.

Section 4: Effective Date. This Local Law shall take effect immediately upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.