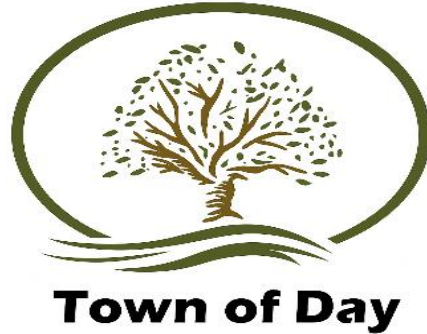




Battery Energy Storage System Ordinance (BESS)

ORDINANCE NUMBER: 2026 - 05

TITLE

This ordinance may be cited as the Town of Day Battery Energy Storage System (BESS) Ordinance. The Town of Day, Marathon County, State of Wisconsin ordains as follows:

ORDINANCE to establish local regulations on the installation and use of battery energy storage systems for the production of electricity and/or conversion of energy for uses on-site and those systems which produce electricity for off-site use and distribution.

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Article 1 – Battery Energy Storage Systems

SECTION 1 – DEFINITIONS

- A. Terms used in this ordinance shall have the following meanings:
- (1) **Applicant** means a person, entity or owner who applies for a Battery Energy Storage System area.
 - (2) **Battery Energy Storage System (BESS)** means an electrochemical device that charges or collects energy from the electric grid or a generation facility, stores that energy, and then discharges that energy at a later time to provide electricity or other electric grid services.
 - (3) **Battery Energy Storage System – Commercial – Utility Scale** means a (BESS) that is designed and built to connect to the transmission grid with an aggregate nameplate capacity of 5MW or greater.
 - (4) **Tier 1** means a residential or small-scale battery energy storage system ≤ 20 kWh.
 - (5) **Tier 2** means a commercial or medium-scale battery energy storage system > 20 kWh to ≤ 600 kWh.
 - (6) **Tier 3** means a utility or large-scale battery energy storage system > 600 kWh.
 - (7) **Commission** means the Town of Day Plan Commission.
 - (8) **Town** means Town of Day.
 - (9) **Owner** means person and/or entity with direct ownership interest in a BESS.
 - (10) **WDNR** means Wisconsin Department of Natural Resources
 - (11) **WDATCP** means Wisconsin Department of Agriculture, Trade & Consumer Protection
 - (12) **EPA** means United States Environmental Protection Agency
 - (13) **Non-Participating Property Line** means a legal boundary defining a parcel of land whose owner has not signed a voluntary agreement or lease with a developer of a commercial energy project or battery energy storage system.
 - (14) **AHJ** means Authority Having Jurisdiction

SECTION 2 - PURPOSE

The purpose of this ordinance is to adopt and wholly incorporate a local ordinance to establish local regulations on the installation and use of Battery Energy Storage Systems (BESS) that serves to preserve or protect the public health, safety and environment, do not significantly increase the cost of the system or significantly decrease its efficiency.

SECTION 3 - APPLICABILITY

A. **General:**

- 1. This ordinance applies to all lands within the boundaries of the Town lying outside the limits of incorporated cities and villages. This ordinance applies to battery energy storage systems only.
- 2. The requirements of this ordinance shall apply to all BESS proposed, operated, modified or constructed after the effective date of this ordinance.

- B. Authority:** These regulations are adopted under the authority granted in section [§60.22](#) Wis. Stats.
- C. Adopted Codes and Standards:** The following Codes are adopted by reference in their entireties:
1. [NFPA 855 \(2026 Edition\)](#)
 2. [NFPA 70, 2023 - National Electrical Code](#)
 3. [SPS 316 Wisconsin Administrative Code – Electrical Standards](#)
 4. [UL Standard 9540 – Safety for energy storage equipment](#)
 5. [UL Standard 9540A – Test method to evaluate fire propagation in batteries](#)

SECTION 4 – TIER CLASSIFICATION

- A. Purpose:** The purpose of this section is to identify the classifications of residential, commercial and utility scale BESS systems.
- B. Tier 1 – Residential or Small-Scale Systems:**
1. Permit Path: This tier will require a zoning permit, conditional use permit, electrical permit, inspection conducted by a third-party electrical inspector and a safety inspection conducted by the local Fire Chief or their designee.
 2. Setbacks: This tier shall follow the standard zoning accessory structure setbacks for a residential district as set forth in the Town Zoning Code.
 3. Safety: This tier shall comply with NFPA 855 reference for residential applications. This reference typically limits indoor placement to garages or dedicated utility rooms.
- C. Tier 2 – Commercial or Medium-Scale Systems:**
1. Permit Path: This tier will require a zoning permit, conditional use permit, a BESS permit from the Town, commercial electrical permit and if applicable, a commercial building permit. Inspections by a third-party commercial electrical inspector and if applicable, a commercial building inspector. A safety inspection conducted by the local Fire Chief or their designee is required. This tier shall comply with all the requirements for obtaining a BESS permit as set forth in Section 5 through Section 14 of this ordinance. *Exemption from electrical permit and inspection if under exclusive control of an electric utility, or an electric cooperative per [SPS 316.002\(2\)\(e\)](#).*
 2. Setbacks: The setbacks for this tier shall be 200' feet from non-participating property lines, 1,800' feet from any residential structure, 200' from any delineated wetland, 200' from a water well and 50' feet from a public road right-of-way.
 3. Safety: This tier shall follow all safety guidelines as outlined in this ordinance and shall have noise limits set at 50dBA day (0700hr-2100hr) and 45dBA night (2100hr-0700hr).
- D. Tier 3 – Utility or Large-Scale Systems:**
1. Permit Path: This tier will require a zoning permit, conditional use permit, a BESS permit from the Town, commercial electrical permit and if applicable, a commercial building permit. Inspections by a third-party commercial electrical inspector and if applicable, a commercial building inspector. A safety inspection conducted by the local Fire Chief or their designee is required. This tier shall comply with all the requirements for obtaining a BESS permit as set forth in

Section 5 through Section 14 of this ordinance. *Exemption from electrical permit and inspection if under exclusive control of an electric utility, or an electric cooperative per [SPS 316.002\(2\)\(e\)](#).*

2. ***Setbacks:*** The setbacks for this tier shall be 200' feet from non-participating property lines, 1,800' feet from any residential structure, 3,200' feet from schools, daycares, places of congregation and hospitals, 200' from any delineated wetland, 200' from a water well and 50' feet from a public road right-of-way.
3. ***Safety:*** This tier shall follow all safety guidelines as outlined in this ordinance and shall have noise limits set at 50dBA day (0700hr-2100hr) and 45dBA night (2100hr-0700hr).

Section 5 – PERMITS

- A. ***When Required:*** An owner shall obtain a BESS permit from the Town prior to the installation, construction, modification, or expansion of a battery energy storage system. No battery energy storage system shall be installed, constructed, modified, or expanded without complying with the provisions of this ordinance.
- B. ***Zoning:*** A zoning permit and conditional use permit shall be required for Tier 1, Tier 2 and Tier 3 BESS. ([click here](#))
- C. ***Building and Electrical:*** A building and electrical permit may be required depending on the scope of work.
- D. ***Permit Fees:*** Permit fees for all applicable permits can be found in the Town of Day Fee Schedule. ([click here](#)). A BESS permit shall not be issued or valid until all required permit fees have been paid.
- E. ***Expiration:*** A BESS permit, issued by the Town, shall expire five (5) years from the date the permit is issued. A BESS permit shall be considered expired if construction of a BESS has not commenced within twelve (12) months from the date the permit is issued or if construction has ceased for a continuous 180 days.
- F. ***Renewal:*** A BESS permit shall be renewed every five (5) years. Upon proper notice from the Town, (120 days prior to the permit expiration) the owner shall file a new permit application not less than 90 days prior to the expiration date. A renewal permit application shall include, at minimum, all items in Section 6 B. 1-8 and 6 C., Section 9, Section 11 and Section 12 of this ordinance.
- G. ***Work Commencing Before Permit Issuance:*** Any person who commences any work on a BESS before obtaining all the necessary permits shall be subject to the penalties in Section 17 of this ordinance.
- H. ***Work Exempt from BESS Permit:*** A BESS permit is not required for Tier 1 or for minor alterations involving ordinary maintenance and repairs to any other BESS system.

Section 6 - APPLICATION

- A. ***General:*** An owner shall file a completed application for a permit with the Town, along with all applicable fees as set forth in the Town fee schedule ([click here](#)) and shall use the Town-provided application form. The Town may require the owner to pay additional fees/costs (i.e. outside attorneys, engineers, environmental specialists, planners, and

other consultants and experts) to cover actual and necessary fees/costs to review and process the application.

B. *Application for Permit:* The application for a BESS permit ([click here](#)) shall contain the following information at a minimum:

1. Name, address, and phone number of all persons having an ownership in the property where the battery energy storage system is intended to be installed.
2. The location, total size, and parcel identification number of the lot or lots including a legal description.
3. Relative location of any and all nearby public and private streets.
4. The existing and intended use of the lot or lots.
5. Identify the size of the BESS project (MAX capacity threshold in kWh or MWh).
6. Identify the expected daily occupancy, number of employees on site and the anticipated hours of occupancy daily.
7. Provide an erosion control plan if disturbing less than one (1) acre of land.
8. Provide a storm water management plan in disturbing one (1) acre or more of land.
9. A site plan (which shall be required to be drawn to scale horizontally and vertically) shall include the following:
 - a. The dimensions and configuration of the lot.
 - b. Proposed setback distances to side and rear property lines, roads (either right-of-way lines or centerlines), septic system components, access easements, and unique site features such as wetlands and waterways.
 - c. The location of all existing, temporary, and proposed building(s) or structure(s).
 - d. The location of all existing public and/or private streets abutting the lot.
 - e. Identify existing and/or proposed access roads, driveways and culverts, showing proposed length, width and size for all.
 - f. Existing and/or proposed private onsite wastewater treatment system(s).
 - g. Identify any water well located within a 1000' foot diameter of the project area.
 - h. Open space(s) and parking area(s).
 - i. All projects/developments within the shoreland, wetland, and/or floodplain areas shall adhere to all applicable site plan standards and requirements of county shoreland-wetland and floodplain zoning; and
 - j. Any applicable easements (access, utility, etc.).
10. Approximate/estimated value of the development, construction, or project.
11. On residential parcels, the number of dwelling units contained within each building and proposed number of bedrooms.
12. Location and dimensions of all buildings or structures to be erected, structurally altered, or moved.
13. Submit a copy of the environmental monitoring testing results per Section 9 L.
14. Any other information concerning the lot or adjacent lots as, may be necessary, as determined by the Town to determine conformance with this ordinance.

C. *Hazard Mitigation Analysis (HMA):*

Purpose: To ensure the system is engineered to prevent and contain fires or explosions and to protect life, property, and the environment.

1. **Requirements for Analysis:** A comprehensive HMA, prepared and stamped by a Licensed Professional Engineer with documented specialized expertise in fire protection and energy storage, shall be submitted with the initial application. The HMA is mandatory for all utility-scale systems and any system utilizing lithium-based chemistries.
 2. **Technical Content:** The HMA shall include, at minimum:
 - a. ***Thermal Runaway Analysis:*** Modeling of the “worst-case” thermal event, demonstrating that fire will not propagate between units per 2026 NFPA 855 Large Scale Fire Testing (LSFT) standards.
 - b. ***Gas and Plume Modeling:*** A dispersion analysis identifying the potential concentration of toxic gases (e.g., Hydrogen Cyanide, Carbon Monoxide) at the property line and nearest residential receptors.
 - c. ***Explosion Prevention:*** Detailed design of deflagration venting or inert gas suppression systems in accordance with NFPA 68/69.
 - d. ***Mitigation Strategy:*** Identification of active safety measures, including Thermal Runaway Propagation Prevention (TRPP) and early-warning electrolyte vapor detection.
 3. **Local Fire Review:** The HMA shall be reviewed and approved by the local Fire Chief or their designee within 30 days of submittal to the Town. If the HMA is not approved by the local Fire Chief or their designee, it shall be denied.
 4. **Notification Clause:** The owner shall notify the Town and Stratford Area Fire Department within 24 hours of any system failure or software update that alters the safety protocols identified in the HMA.
- D. The owner shall submit the number of copies of the application, as determined by the Town, and a letter of intent to the clerk of each adjoining political subdivision.
- E. The owner shall submit one (1) digital copy and one (1) hard copy of the application to the Town in a format that is acceptable to the Town.
- F. Each copy of the application shall be complete, including all documents, drawings, maps, worksheets, and other materials that are included in the original application.

Section 7 – APPLICATION REVIEW

- A. An application is complete if it complies with the filing requirements of this ordinance and payment of all application fees and costs.
- B. The Town reserves the right to solicit the services of a Third-Party Reviewer with expertise in the BESS technology field to assist with, but not limited to, the following services:
1. Review of the site and architectural plan, battery technology compliance with NFPA 855 (HMA) and with other applicable regulatory standards and codes not specifically identified.
 2. Assist with the review of the ERP, completed noise study, decommissioning plan and review of decommission financial security agreement.
 3. Other items the Town deems necessary related to BESS technology and project-related questions.
 4. Project inspection for compliance with this ordinance, applicable codes and standards.

5. Review of decommissioning updates.
- C. The owner shall be responsible for reimbursing the Town for its reasonable costs incurred for the services of said Third-Party reviewer that is mutually agreed upon by the Town and the Applicant prior to the Town's commencement of the plan review process. The Town should make the best effort so that the Third-Party review does not unreasonably delay the project's permitting or construction process.
 - D. The Town shall determine the completeness of an application and shall notify the owner in writing of the completeness of determination no later than forty-five (45) days after the day the application is filed.
 - E. If the Town determines that the application is incomplete, the owner shall provide additional information requested and an additional forty-five (45) day completeness review period will begin the day after the Town receives responses to all required items identified in the notice.
 - F. If the owner fails to provide additional information specified in the notice of an incomplete application within ninety (90) days from the date of the written notice, the application will be deemed abandoned and any application fee and/or costs shall be forfeited. The owner may refile the application at a later date subject to payment of a new application fee and any other costs set forth in this ordinance. There is no limit to the number of times that an owner may refile an application.
 - G. If the Town does not make a completeness determination within the applicable review period as set forth above, the application is considered to be complete.
 - H. The Town shall have ninety (90) days from the date that it notifies the owner that the application is complete in which to approve or disapprove the application. The time for approval may be extended by the Town depending on the complexity of the proposed system.
 - I. The owner shall record a copy of a written decision approving an application with the Marathon County Register of Deeds within thirty (30) days of the written decision date for all applicable property. If the owner does not timely record such decision, the Town may record the decision at the owner's expense.
 - J. The Town shall post in a conspicuous place on the property for which a permit is issued, attesting to the fact that activity has been permitted pursuant to the provisions of this ordinance and the permit itself.

Section 8 – ADDITIONAL PERMITS

- A. An owner shall submit a copy of all necessary State and Federal permits and approvals to the Town within (30) days of any permit approval that was not provided with the owner's application.
- B. Any substantial change or expansion of the approved plans, change in use, and/or proposed addition(s) to any existing building(s) or proposed new building(s), other than battery augmentation, shall require the owner to reapply for a Conditional Use Permit for its review and approval by the Town Plan Commission.

Section 9 – EMERGENCY MANAGEMENT – SAFETY - ENVIRONMENT

- A. *Liaison:*** The owner shall establish and maintain a liaison with the Town, including the County, Fire, Police, and other appropriate first responders serving the area.
- B. *System Monitoring:*** The owner shall show confirmation that there will be remote monitoring of the BESS 24 hours daily, 7 days a week for the life of the system.
- C. *System Listing:*** All batteries integrated within the BESS shall be listed under UL 1973. The BESS shall be listed in accordance with UL 9540 (certification by a Nationally Recognized Testing Laboratory to meet safety requirements outlined in UL 9540)
- D. *System Standards:*** The BESS facility shall be designed, constructed, operated, maintained and decommissioned to meet NFPA 855 standards.
- E. *Emergency Response Plan:*** The owner shall develop and update, on an annual basis, an Emergency Response Plan (ERP). The plan shall be developed in strict coordination with the Stratford Area Fire Department, Marathon County Emergency Management Office, and Marathon County Sheriff's Office. The plan shall be approved by all three (3) entities prior to permit approval. The ERP shall include, but not limited to:
1. Evacuation plan.
 2. Firefighting techniques.
 3. Responsibility assignments for each scenario in the ERP.
 4. Provide an up-to-date contact list for after-hours personnel and emergency contact information with responsible parties and keyholders.
- F. *ERP Distribution:*** The owner shall distribute a copy of its Emergency Response Plan (ERP) to the following:
1. Marathon County Emergency Management, Attn: Emergency Management Director, 1000 Lake View Drive, Suite 500, Wausau, WI 54403
 2. Marathon County Sheriff's Office, Attn: Marathon County Sheriff, 500 Forest Street, Wausau, WI 54403
 3. Town of Day Clerk office, 122518 County Rd C, Stratford, WI 54484
 4. Stratford Area Fire Department, Attn: Fire Chief, P.O Box 103, Stratford, WI 54484 or 212200 WI-97, Stratford, WI 54484.
 5. Clerk for any city, village or town within one-half mile of any of its BESS systems facilities.
 6. Any fire, police, or other first responder identified by the county's emergency management director or the clerk of any city, village, or town who has received a copy of the owner's emergency response plans as set forth above.
- G. *ERP Training:*** The owner shall provide and review Emergency Response Plans (ERP), fully fund and conduct mandatory initial and annual refresher training with the Stratford Area Fire Department, their mutual aid partners from the surrounding area and any regional area emergency response organization deemed necessary by the local Fire Chief or their designee. The initial training shall occur not less than 15 days and not more than 30 days prior to the initial system startup. Annual training shall occur annually within 15 days from the original date of the initial training and subsequently on an annual basis for the life of the system. The local Fire Chief may require additional training as deemed necessary to train new employee(s), firefighter(s) or first responder(s). All training dates and times shall be coordinated and approved by the local Fire Chief, their designee or the AHJ.

- H. **Noise:** A noise study shall be conducted prior to construction, after construction and annually to verify that the BESS is in compliance with the applicable Tier classification in Sec. 4 of this ordinance.
- I. **Operation and Maintenance:** The project shall be constructed, operated and maintained in compliance with standard industry utility practice. The Town will have a third-party reviewer to assist with the review of BESS design, (See Sec. 7-B). Routine maintenance shall be performed on the BESS equipment by the party responsible for performance obligations (Developer, Owner and/or Operator) to ensure proper performance of the technology. The Town and Stratford Area Fire Department shall be notified if there are concerns about failure to meet any ERP standards in the BESS performance.
- J. **Special Equipment:** The owner shall provide, maintain, update and/or replace any specialized equipment (e.g., thermal imaging or remote water-deluge monitors) or safety equipment as identified in the HMA or as required by the local Fire Chief or their designee.
- K. **Testing:** The owner shall conduct thermal imaging by a Certified Thermographer every 60 days for the life of the system, to identify any potential hot spots and/or malfunctions within the unit(s) and report the findings to the Town, Stratford Area Fire Department and Marathon County Emergency Management Director.
- L. **Environmental Monitoring:** The owner shall conduct, at their expense, environmental monitoring to include soil, well water and storm water testing/sampling on an initial and annual basis and file a report of the results to the Town and WDNR within 45 days of the sampling date. The initial testing/sampling shall occur not less than 30 and no more than 180 days prior to any construction. The initial testing/sampling results shall be submitted with the BESS permit application. Annual testing/sampling shall occur annually within 15 days from the original date of the initial testing/sampling and subsequently on an annual basis for the life of the system. All initial and annual testing/ sampling shall include, but not limited to, all of the following:
1. Sampling of all public and private water wells located within 1,000' feet of a BESS enclosure perimeter (Fencing).
 2. Sampling of all storm water drainage areas, ditches, waterways, streams, ponds, creeks, rivers etc. located within 2,500' feet of the BESS enclosure perimeter (Fencing).
 3. A minimum of four (4) soil core samples taken within the BESS enclosure area.
 4. A minimum of eight (8) soil core samples taken (2 per side) within 150' feet of the BESS enclosure perimeter (Fencing).
 5. The initial soil core samples, prior to any construction, shall be taken from the top of the existing undisturbed grade.
 6. All soil core samples shall be a minimum of 24" inches in depth and each core tested as follows:
 - 1 sample test at 0" – 6"
 - 1 sample test at 6" – 12"
 - 1 sample test at 12" – 18"
 - 1 sample test at 18" – 24"
 7. Soil samples shall be tested for, but not limited to, all elements per Sec.12 C. 2. and meet minimum EPA testing standards.

8. All soil samples shall be taken by a Wisconsin Certified Soil Tester.
9. All well water and storm water sample testing shall meet minimum WDNR and EPA testing standards.
10. All well water samples shall be taken by a Wisconsin licensed Master Plumber or Pump Installer.
11. All storm water samples shall be taken by a Certified Environmental Specialist.
12. All well water, storm water and soil samples shall be tested by a WDATCP and/or WDNR certified testing lab.

NOTE: All soil sample monitoring locations shall have a GPS coordinate and identify on a site map of the BESS enclosure area, the enclosure perimeter area and conducted at staggered random locations within and around the BESS enclosure. No soil sample location may be used more than once unless contamination is identified. The Town reserves the right to require soil testing outside the minimum 150' BESS enclosure perimeter area distance.

M. Contamination/Remediation:

1. Soils: If contamination is identified, immediate remediation of the contamination shall occur at the BESS owner's expense, and this location shall be added, in addition, to the minimum number of required soil samples.
2. Water Wells: If any water well located within the 1,000' foot BESS enclosure perimeter sampling area is identified to be contaminated and the contamination was caused by the BESS, the BESS owner shall be responsible for any and all corrective actions required by WDNR to include but not limited to;
 - (1) Contamination remediation,
 - (2) Provide a new water well and all necessary materials, equipment, connections, excavations associated with a new water well,
 - (3) Abandonment of the contaminated water well.
3. Storm Water: If any storm water drainage area, ditch, waterway, stream, pond, creek, river etc. located within the 2,500' foot BESS enclosure perimeter sampling area is identified to be contaminated and the contamination was caused by the BESS, the BESS owner shall be responsible for any and all corrective actions required by WDNR and EPA.

NOTE: The Town and/or WDNR may require monitoring wells, at the BESS owners' expense, to be installed at any time for the purpose of monitoring ground water.

Section 10 - BATTERY ENERGY STORAGE SYSTEMS (BESS) – Commercial – Utility Scale

- A. Minimum lot size: 10 acres.
- B. BESS shall meet all setbacks as required in the applicable Tier classification. (See Sec. 4) Setbacks shall be measured from BESS equipment (excluding any perimeter fencing and sound barrier), to the property line.
- C. BESS shall not be located within the 100-year floodplain.
- D. BESS shall not be located within a designated wetland.
- E. Lighting shall comply with the National Fire Protection Association (NFPA) 855.

- F. Security fencing shall enclose the BESS area with a minimum of a seven (7) foot high fence consistent with the requirements established in NFPA 70, but no higher than ten (10) feet.
- G. The owner shall submit a Hazard Mitigation Analysis (HMA) under NFPA 855.
- H. The owner shall submit an Emergency Response Plan (ERP).
- I. Stormwater management and/or erosion control shall meet the requirements imposed by the Wisconsin Department of Natural Resources (WDNR) including but not limited to fire suppression runoff.
- J. On-site power and communications lines between BESS 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.
- K. Submit a Joint Development Agreement (JDA) to cover the absence of any Utility Tax collected by the State.
- L. Owner/Developer agrees to replace lost tax revenues.
- M. Following initial completion of the project and the project being put into operation, the owner shall notify the Town, in writing, of any battery enclosures being removed or installed on the project. Such notification shall be at least 30 days prior to the removal or installation, except in cases of emergency, when owner shall notify the Town as soon as practicable. No batteries shall be stored on the premises outside of battery enclosures, with the exception of batteries stored for future use. Any batteries on the premises stored for future use shall be stored to NFPA 855 standards.

Section 11 – DECOMMISSIONING AND FINANCIAL ASSURANCE

- A. **Purpose:** The purpose of this section is to ensure that all BESS facilities are properly decommissioned, removed, the site is restored to a safe, non-hazardous condition upon cessation of operations or the end of the project's useful life, without financial burden to the municipality or taxpayers. The owner is responsible for the removal of the BESS.
- B. **Decommissioning Plan Requirements:** A decommissioning plan, designed by a third-party Licensed Professional Engineer, shall be developed, submitted to and approved by the Town prior to the issuance of the BESS permit. The plan shall identify at minimum the following:
 - 1. Scope of Work: A description of how all equipment (batteries, inverters, foundations, fencing, access roads and electrical infrastructure) will be removed.
 - 2. Site Restoration: Steps for restoring the site of the project to pre-construction environmental and physical condition.
 - 3. Hazardous Waste Protocol: Identification of certified and licensed facilities for the proper disposal and recycling of all hazardous BESS components.
 - 4. Disposal: Proof of proper disposal shall be submitted to the Town within 30 days after completion.
 - 5. Estimated Cost: Provide an estimated cost for restoration less the project's estimated salvage value ("Net Cost for Restoration").
 - 6. Timeline: Provide the estimated time frame that the decommissioning will be completed.

NOTE: All requirements of Section 12 shall be completed within 12 months from the date the system ceases operations, is deemed to be decommissioned or condemned.

- C. Plan Review/Update:** The decommissioning plan shall be reviewed every five (5) years, from the date of original permit approval, for the purpose of updating the costs for decommissioning and, if applicable, updating the financial agreement identified in Sec. E below. The Town shall not unreasonably withhold, delay or condition such approval.
- D.** Decommissioning shall be considered incomplete until all items listed in Section 12 are completed.
- E. Financial Assurance:** Prior to permit issuance, the owner shall post a decommissioning bond, irrevocable letter of credit or cash escrow in favor of the Town in the amount of 125% of the estimated gross cost of removal and site restoration, prepared by a third-party Licensed Professional Engineer. Recycling credits for salvaged metal or battery materials used to reduce the estimated cost are prohibited. The bond shall cover the full cost of removal and physical restoration.
- F. Inflation Adjustment:** The bond amount shall be re-evaluated every five (5) years, from the date of original permit approval, and adjusted for inflation based on the Consumer Price Index (CPI).
- G. Trigger for Execution:** The Town may utilize the financial assurance to initiate and/or complete the decommissioning if the system is condemned or the owner fails to complete the decommissioning process.
- H. Condemnation:** The Town may condemn a BESS if the owner fails to comply with any of the following, within 90 days of proper notice from the Town, for non-compliance:
 - 1. The system is non-operational for a continuous period of 365 days.
 - 2. Fails to maintain the required safety certifications (e.g., UL 9540).
 - 3. Fails to provide the required initial and/or annual training per Sec. 9 G.
 - 4. Fails to provide the required specialized equipment per Sec. 9 J.
 - 5. Fails to conduct the required thermal imaging requirement per Sec. 9 K.
 - 6. The owner files for bankruptcy or insolvency.
- I.** The Town may require an owner to submit a substitute financial assurance of the owner's choosing if the Town determines an event has occurred that raises material concern regarding the viability of the existing financial assurance.
- J.** Any substantial change or expansion of the submitted plan of operation shall require the owner to reapply for a BESS permit.

Section 12 – SITE RESTORATION AND ENVIRONMENTAL REMEDIATION

A. Objective:

Upon the decommissioning of a BESS facility, the owner shall restore the project site to its pre-development state, ensuring the land is safe for its original designated use (e.g., Agricultural, Residential, or open space) and free from any residual environmental hazards.

B. Infrastructure Removal:

- 1. Subsurface Structures: All concrete pads, footings, piers and foundations shall be completely removed in their entirety.
- 2. Underground Utilities: All buried conduit, cabling and grounding grids shall be removed. Any abandoned-in-place utilities must be specifically approved by the Town and mapped for future land use.

3. Access Roads: All gravel, concrete, asphalt, crushed stone or geotextile fabric used for access roads and equipment staging areas shall be removed and the underlying soil shall be scarified to alleviate compaction.

C. Environmental Testing and Remediation:

1. Phase II Environmental Site Assessment (ESA): Before final closure, a Licensed Environmental Professional shall conduct soil and groundwater sampling at the locations of former battery containers and transformers.
2. Contamination Standards: Soil shall be tested for heavy metals and electrolyte-specific chemical markers (e.g., Lithium, Cobalt, Nickel, Manganese, Lead, PFAS, Mercury depending on BESS chemistry). Any detected levels exceeding EPA standards shall be remediated at the owner's expense. All soil sampling shall be completed in accordance with Section 9 L.
3. Remediation Reporting: A final report verifying that the site meets all applicable environmental safety standards shall be submitted to the Town and WDNR prior to the release of the Decommissioning Bond.

D. Soil and Vegetation Restoration:

1. Soil Quality: Excavated areas shall be backfilled with clean, weed-free subsoil and topped with a minimum of twelve (12) inches of high-quality topsoil matching the surrounding native soil profile.
2. Subsoil De-Compaction: Deep ripping to a depth of 18"- 24" inches to ensure the land returns to full productivity is required.
3. Re-vegetation: The site shall be re-seeded with a native seed mix that is weed-free or permanent cover crop approved by the Town.
4. Erosion Control: The owner is responsible for maintaining erosion and sediment controls until a minimum of 80% permanent vegetative cover is established across the entire project area.

E. Verification and Bond Release:

The Town shall conduct a final site walk-through to verify compliance with the Decommissioning Plan and site restoration has been completed. The Decommissioning Bond shall not be released until the Town receives written certification from a Licensed Professional Engineer that all decommissioning requirements have been satisfied.

Section 13 - CHANGE IN OWNERSHIP and SEVERABILITY

- C. Any change in ownership of a BESS will require the new owner to provide written acceptance to conform to all provisions of the original permit issued and obtain a certificate of compliance that the BESS is in compliance with this ordinance prior to the transfer to the new owner. Notice of Intent to sell or transfer ownership of a BESS shall be submitted by an owner to the Town 90 days prior to the change occurring. The Town reserves the right to require a new BESS permit for any new owner.
- D. Should any section, clause, provision, standard, or portion of this Ordinance be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.
- E. If any application of this Ordinance to a particular parcel of land, BESS or project is adjudged unconstitutional or invalid by a final order of a court of competent jurisdiction, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment, unless specifically required by the court.

Section 14 – INSURANCE

A. Owner Requirements:

1. At all times during construction and operation, an owner shall maintain Commercial General Liability - \$1,000,000 per occurrence; \$2,000,000 general aggregate; \$1,000,000 personal and advertising injury; \$2,000,000 products-completed operations aggregate; \$10,000 medical expense.
2. Coverage shall include Town of Day as additional insured.
3. Coverage shall be primary and noncontributory to the insurance of the Town of Day.
4. Coverage shall provide a waiver of subrogation in favor of the Town of Day.
5. Umbrella/Excess Liability - \$10,000,000 each occurrence; \$10,000,000 annual aggregate; \$10,000,000 completed operations aggregate.
6. The policy shall follow form to the commercial general liability policy.
7. Limits of insurance can be met by any combination of primary and excess liability coverage.

B. Contractor Requirements:

1. At all times, during construction and/or maintenance, the general contractor and any sub-contractor shall maintain insurance policies with the following listed minimum insurance coverages and minimum limits of liability from insurers licensed to do business in the State of Wisconsin and having at least an A.M. Best rating of A-.
2. Any sub-contractor is required to provide insurance with limits in accordance with the sub-contractor's usual practice with insurance carriers authorized to do business in the state where the project is located.
3. Commercial General Liability - \$1,000,000 per occurrence; \$2,000,000 general aggregate (on a per project basis); \$1,000,000 personal and advertising injury; \$2,000,000 products-completed operations aggregate; \$10,000 medical expense.
4. Coverage shall include the owner and Town of Day as additional insureds.
5. Coverage shall be primary and noncontributory to the insurance of the owner and Town of Day.
6. Coverage shall provide a waiver of subrogation in favor of the owner and Town of Day.
7. The products-completed operations coverage shall be maintained for the combined period of the limitation and repose statutes of the State of Wisconsin.
8. Automobile Liability - \$1,000,000 combined single limit.
9. Coverage shall include the owner and Town of Day as additional insured.
10. Workers' Compensation and Employers Liability: Workers' compensation as required and amended from time to time by Wis. Stats. [§102](#). \$1,000,000 employer's liability for each bodily injury by accident, bodily injury by disease and annual aggregate.
11. Coverage shall provide a waiver of subrogation in favor of the owner and Town of Day.
12. Umbrella/Excess Liability - \$10,000,000 each occurrence; \$10,000,000 annual aggregate; \$10,000,000 completed operations aggregate.

13. The policy shall follow form to the employer's liability, commercial general liability and commercial auto liability policies.
14. Pollution Liability - \$2,000,000 per claim and \$2,000,000 annual aggregate.
15. Coverage shall include the owner and Town of Day as additional insureds.
16. Coverage shall provide a waiver of subrogation in favor of the owner and Town of Day.
17. Professional Liability: If architectural or engineering services are being performed by a contractor or subcontractor, coverage shall include limits of at least \$2,000,000 per claim and \$2,000,000 annual aggregate.
18. Unmanned Aircraft/Drone Liability: If drone is used with respect to construction and/or maintenance of the system, coverage shall include a limit of at least \$1,000,000.
19. Coverage shall include the owner and Town of Day as additional insured.

Section 15 – VIOLATIONS

- A. No person or entity shall do any of the following:
 1. Violate any provision of this ordinance.
 2. Knowingly provide false information; make a false statement; and/or fail to provide or misrepresent any material fact to the Town, Town employee, agent, or Town governing body.
 3. Disobey, fail, neglect, resist, or refuse to comply with a permit or order issued pursuant to this ordinance.
- B. Each violation and each day a violation exists, continues or occurs shall constitute a separate offense.

Section 16 – ENFORCEMENT

- A. The Town shall enforce this ordinance and may conduct inspections and investigate complaints relating to compliance with this ordinance.
- B. The Town may utilize credentialed Inspectors for, but not limited to, Fire Prevention/Emergency Response Planning, Life-Health and Safety Training, Building, Electrical, Plumbing, HVAC and Environmental Protection to ensure compliance with this ordinance.
- C. The Town may request permission to inspect, at a reasonable time and date, any premises or structure for which is subject to a permit or order to determine compliance with this ordinance. Refusal to grant permission is grounds for denial or revocation of a permit. If permission is not given, the Town may apply for, obtain, and execute a special inspection warrant pursuant to [§ 66.0119](#).
- D. If the Town determines a violation of any provision of this ordinance that has occurred, the Town may issue a written notice stating the conditions of non-compliance, specifying the action required to come into compliance, and specifying a reasonable amount of time when compliance is required.
- E. The Town may revoke a permit for substantial noncompliance with any provision of this ordinance, refusal to permit inspection of battery energy storage systems facilities for which a permit has been granted, or failure to comply with any action required within a notice of noncompliance.
- F. Any person or entity who violates this ordinance may be subject to any of the following:

1. Issuance of a citation; or
 2. Commencement of legal action for all legal remedies including seeking injunctive relief.
- G.** The Town is not required to issue a notice of noncompliance or take any other action prior to enforcing violations of this ordinance as set forth above.
- H.** Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude enforcement under this ordinance.

Section 17 – PENALTIES

- A.** Any person or entity that violates this ordinance is subject to a forfeiture of not less than \$500 and not more than \$10,000 for each violation and/or subject to injunctive relief. Each violation and each day a violation exists, continues or occurs shall constitute a separate offense.
- B.** Any person or entity who violates this ordinance shall pay court costs and any reasonable attorney's fees associated with a forfeiture assessed under section 17-A. and for any action for injunctive relief sought by the Town. The remedies provided herein shall not be exclusive to other remedies.
- C.** The forfeiture thresholds set forth in Section 17-A. shall be doubled for repeated violations of this ordinance that occur within any twelve (12) month period.

Section 18 – EFFECTIVE DATE

Following passage by the Town Board, this ordinance shall take effect the day after the date of publication or posting as provided by Wis. Stat. [§ 60.80](#) or on a date established by the Town Board.

ADOPTED THIS 18th DAY OF August, 2026
TOWN OF DAY

THIS ORDINANCE SHALL TAKE EFFECT ON.

THIS 20th DAY OF August, 2026



Joe Brueggen, Town Board Chairperson



Chad Hoffman, Supervisor



Trine Spindler, Supervisor

ATTESTED TO; THIS 18th DAY OF August, 2026



Rebecca Post, Town Clerk