

Local Law ___ of 2021
A Local Law titled “Battery Energy Storage Systems”

BE IT ENACTED by the Town Board of the Town of Westerlo, County of Albany as follows:

Section One. Title

This local law shall be known as the "Battery Energy Storage Systems" law.

Section Two. Authority

This local law is adopted pursuant to sections 10 and 22 of the Municipal Home Rule Law. This Local Law shall supersede the provisions of Town Law to the extent it is inconsistent with the same, and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.

Section Three. Purpose

This local law is adopted to advance and protect the public health, safety, and welfare of the Town by creating regulations for the installation and use of battery energy storage systems as defined herein, with the following objectives:

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

Section Four. Definitions

ANSI: American National Standards Institute.

BATTERY: One or more devices (typically called “cells”), however electrically connected, capable of storing and delivering electricity by electrochemical means. This law does not apply to batteries in consumer products or motor vehicles solely powered by combustion.

BATTERY ENERGY STORAGE SYSTEM (“BESS”): A rechargeable Energy Storage System comprising Batteries, Battery chargers, controls, power conditioning systems and associated electrical equipment designed to provide electrical power. A BESS can be used to provide standby

or emergency power, an uninterruptable power supply, load shedding, load sharing, or similar capabilities. A BESS is classified as a Tier 1 or Tier 2 as follows:

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

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

DEDICATED-USE BUILDING: A building that is built for the primary intention of housing BESS equipment and is classified as Group F-1 occupancy as defined in the International Building Code. It is constructed in accordance with the Uniform Code, and it complies with the following:

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

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.

ENERGY STORAGE SYSTEM: An arrangement or combination of components and structures designed to store and controllably deliver electricity. The means of storage within a Storage System may include, but are not limited to, batteries, flywheels, and elevated water tanks.

MATURE FOREST - A mature forest is any unimproved land in excess of one (1) acre with trees that are predominantly six (6) inches in diameter or more.

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.

NFPA: National Fire Protection Association.

PRIME FARMLAND and PRIME SOILS - Agricultural land meeting (1) the national parameters for “Prime Farmland” as described in the then current guidelines set forth in the National Soil Survey Handbook § 622.03/Farmland Classification, as amended from time to time; and (2) “farmland of statewide importance,” pursuant to the State of New York classification system for Albany County, including the areas in the Town depicted on the Map annexed as Appendix D to this law.

SPECIAL FLOOD HAZARD AREA (“SFHA”): The land area covered by the floodwaters of the base flood on the National Flood Insurance Program's (“NFIP”) maps. The SFHA is the area where the NFIP’s floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies.

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.

WATT (“W”): A unit of power. A power of one thousand watts (1000 W) is also referred to as one kilowatt (“kW”). A power of one million watts (1,000,000 W) is also referred to as one megawatt (“MW”).

WATT-HOUR (“Wh”). A unit of energy, equal to the amount of energy delivered in one hour by a power of one watt. Energy in the amount of one thousand watt-hours (1000 Wh) is also referred to as one kilowatt-hour (“1 kWh”). Energy in the amount of one million watt-hours (1,000,000 Wh) is also referred to as one megawatt-hour (“MWh”).

Section Five. Applicability

1. The requirements of this Local Law shall apply to all BESS permitted, installed, or modified in Town after the effective date of this Local Law, excluding general maintenance and repair.
2. Modifications to, retrofits or replacements of an existing BESS that increase the total designed discharge duration or power rating shall be subject to this Local Law.

Section Six. General Requirements

1. A building permit and an electrical permit shall be required for installation of all BESS.
2. Issuance of permits and approvals by the Planning 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 BESS, all Dedicated Use Buildings, and all other buildings or structures that (1) contain or are otherwise associated with a BESS 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 of Westerlo Building Code.

Section Seven. Permitting Requirements for Tier 1 Battery Energy Storage Systems

Tier 1 BESS shall be allowed in all zoning districts except the hamlets, require issuance of a BESS Permit, and be subject to the Uniform Code.

Section Eight. Permitting Requirements for Tier 2 Battery Energy Storage Systems

Tier 2 BESS are allowed in all zoning districts except the hamlets, subject to site plan approval and a special use permit issued by the Zoning Board of Appeals and in conformance with the Uniform Code.

1. APPLICATIONS

Applications for the installation of Tier 2 BESS shall be:

- a) reviewed by the Code Enforcement/Zoning 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, (i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and (ii) matters relating to the proposed BESS 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, 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.
- b) subject to a public hearing to hear all comments for and against the application. The Planning Board [or Zoning Board of Appeals] shall have a notice printed in a newspaper of general circulation in the Town at least 5 days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within 200 feet of the property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at the public hearing.
- c) referred to the County Planning Department pursuant to General Municipal Law § 239-m if required.
- d) upon closing of the public hearing, the Planning Board shall take action on the application within 62 days of the public hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the reviewing board and Applicant.

2. FLOODPLAIN

An applicant for a BESS shall obtain necessary local floodplain development permits if proposed within Special Flood Hazard Areas.

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.

3. SIGNAGE

a) The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the BESS, any special hazards associated, the type of suppression system installed in the area of BESS, and 24-hour emergency contact information, including reach-back phone number.

b) 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.

4. LIGHTING

Lighting of a BESS shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

5. VEGETATION AND TREE-CUTTING

Areas within ten feet (10 ft) on each side of a Tier 2 BESS 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.

6. NOISE

The one-hour average noise generated from a BESS, including all 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 and Occupied Community Building. Applicants may submit equipment and component manufacturer's 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 BESS to demonstrate compliance with this standard.

7. DECOMMISSIONING

a) Decommissioning Plan

The applicant shall submit a decommissioning plan developed in accordance with the Uniform Code, containing a narrative description of the activities to be accomplished for removing the BESS from service, and from the facility in which it is located. The decommissioning plan shall also include: (i) the anticipated life of the BESS; (ii) the estimated decommissioning costs; (iii) how said estimate was determined; (iv) the method of ensuring that funds will be available for decommissioning and restoration; (v) the method that the decommissioning cost will be kept current; (vi) the manner in which the BESS will be decommissioned, and the Site restored; and (vii) 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.

b) Decommissioning Fund

The applicant, or successors, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town for the removal of the BESS, 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.

8. SITE PLAN APPLICATION

For a Tier 2 BESS, site plan approval shall be required. Any site plan application shall include the following information:

- a) Property lines and physical features, including roads, for the project site.
- b) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- c) A one or three-line electrical diagram detailing the BESS layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
- d) A preliminary equipment specification sheet that documents the proposed BESS components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- e) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the BESS. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- f) Name, address, phone number, and signature of the project Applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the BESS.
- g) Zoning district designation for the parcel(s) of land comprising the project site.
- h) Commissioning Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code (referenced in Appendix 1). BESS commissioning shall be conducted by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code (referenced in Appendix 1) shall be provided to Planning Board prior to final inspection and approval and maintained at an approved on-site location.

- i) Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code (referenced in Appendix 2). The Fire Safety Compliance Plan shall be certified by a New York State (NYS) Licensed Professional Engineer or other Licensed Professional that such plan complies with all applicable law, regulations, code or requirements.
- j) System and Property Operation and Maintenance Manual. Such plan shall describe continuing BESS 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) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
- l) Engineering documents must be signed and sealed by a NYS Licensed Professional Engineer or NYS Registered Architect prior to approval by any reviewing board or permit issuing authority.
- m) An Emergency Operation Plan per requirements set forth in Appendix 3.

9. SPECIAL USE PERMIT STANDARDS

- a) Setbacks. Tier 2 BESS shall comply with the setback requirements of the underlying zoning district for principal structures.
- b) Height. Tier 2 BESS shall comply with the building height limitations for principal structures of the underlying zoning district.
- c) Fencing Requirements. Tier 2 BESS, 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.
- d) Screening and Visibility. Tier 2 BESS 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.
- e) Siting Considerations. It is a goal of the Town to preserve, to the maximum extent practicable, agricultural land with Prime Farmland and Prime Soils and Mature Forests. No large-scale WECS project shall be permitted on:
 - (1) any site that is Prime Farmland or which contains Prime Soils; or
 - (2) any site that either
 - (a) contains more than one (1) acre of Mature Forest at the time the application was filed; or

(ii) was a Mature Forest one (1) year prior to the submission of an application for a large-scale WECS project. The applicant may submit information to demonstrate that the soils on the proposed project site are not Prime Soils or have poor drainage.

f) Comply with all other Special Use Permit General Standards.

10. OWNERSHIP CHANGES

If the ownership of a BESS 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 BESS shall notify the zoning enforcement officer (ZEO) of such change in ownership or operator within thirty (30) days of the ownership change. A new owner or operator must provide such notification to the Building Department and Town Clerk in writing. The special use permit and all other local approvals for the BESS would be void if a new owner or operator fails to provide written notification to the Building Department and Town Clerk 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 law.

Section 10. Safety

1. SYSTEM CERTIFICATION

All BESS and associated equipment shall be listed by a NRTL to UL 9540 or CAN 9540 (Standard for BESS and Equipment) with subcomponents meeting each of the following standards that are applicable based on the storage type (electrochemical, thermal, and mechanical):

- 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 and applicable codes, regulations and safety standards may be used to meet system certification requirements.

2. SITE ACCESS

All BESS 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 Fire Company and, if the Tier 2 BESS is located in an ambulance district, the local ambulance corps.

All BESS, their components, and associated ancillary equipment shall be placed with 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.

Section Eleven. Permit Time Frame and Abandonment

1. The Special Use Permit and site plan approval for a BESS shall be valid for a period of 12 months, provided that a building permit is issued for construction and construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 12 months after approval, the Applicant or the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 36 months, the approvals shall expire.
2. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the available bond and/or security for the removal of a Tier 2 BESS and restoration of the site in accordance with the decommissioning plan.
3. The BESS shall be considered abandoned when it ceases to operate consistently for more than one year.

Section 12. Enforcement

Any violation of this BESS Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of Town.

Section Thirteen. Severability.

If any clause, sentence, phrase, paragraph or any part of this local law shall for any reason be adjudicated finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this local law would have been adopted had any such provisions been excluded.

Section Fourteen. Repeal

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section Fifteen. Effective Date.

This Local Law shall become effective upon filing in the office of the Secretary of State in accordance with the provisions of the Municipal Home Rule Law.

APPENDIX 1: Commissioning Plan

The BESS commissioning plan shall comply with the Uniform Code and include, at a minimum, the following information:

1. A narrative description of the activities that will be accomplished during each phase of commissioning including the personnel intended to accomplish each of the activities.
2. A listing of the specific BESS and associated components, controls and safety related devices to be tested, a description of the tests to be performed and the functions to be tested.
3. Conditions under which all testing will be performed, which are representative of the conditions during normal operation of the system.
4. Documentation of the owner's project requirements and the basis of design necessary to understand the installation and operation of the BESS.
5. Verification that required equipment and systems are installed in accordance with the approved plans and specifications.
6. Integrated testing for all fire and safety systems.
7. Testing for any required thermal management, ventilation or exhaust systems associated with the BESS installation.
8. Preparation and delivery of operation and maintenance documentation.
9. Training of facility operating and maintenance staff.
10. Identification and documentation of the requirements for maintaining system performance to meet the original design intent during the operation phase.
11. Identification and documentation of personnel who are qualified to service, maintain and decommission the BESS, and respond to incidents involving the BESS, including documentation that such service has been contracted for.

APPENDIX 2: Operation and Maintenance Manual

The Operation and Maintenance Manual shall be provided to both the BESS owner and their operator before the BESS is put into operation. The BESS shall be operated and maintained in accordance with the manual and a copy of the documentation shall be retained at an approved onsite location to be accessible to facility personnel, fire code officials, and emergency responders.

In addition to complying with the Uniform Code, the BESS Operation and Maintenance Manual shall, at a minimum, include design, construction, installation, testing and commissioning information associated with the BESS as initially approved after being commissioned, as well as the following information:

1. Manufacturer's operation manuals and maintenance manuals for the entire BESS or for each component of the system requiring maintenance, that clearly identify the required routine maintenance actions.
2. Name, address and phone number of a service agency that has been contracted to service the BESS and its associated safety systems.
3. Maintenance and calibration information, including wiring diagrams, control drawings, schematics, system programming instructions and control sequence descriptions, for all energy storage control systems.
4. Desired or field-determined control set points that are permanently recorded on control drawings at control devices or, for digital control systems in system programming instructions.
5. A schedule for inspecting and recalibrating all BESS controls.
6. A service record log form that lists the schedule for all required servicing and maintenance actions and space for logging such actions that are completed over time and retained on site.
7. Inspection and testing records

APPENDIX 3: Emergency Operations Plan

An emergency operations plan shall include the following information:

- a. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
- b. Procedures for inspection and testing of associated alarms, interlocks, and controls.
- c. Procedures to be followed in response to notifications from the BESS Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
- d. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.
- e. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
- f. Procedures for dealing with BESS equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged BESS equipment from the facility.
- g. Other procedures as determined necessary by the [Village/Town/City] to provide for the safety of occupants and emergency responders.
- h. Procedures and schedules for conducting drills of these procedures.