

§ 68-456. Battery energy storage systems.

- A. 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, Subdivisions 1 and 7, §§ 261 through 263 of the Town Law, and § 10 of the Municipal Home Rule Law of the State of New York, which authorize the Town of Islip to adopt zoning provisions that advance and protect the health, safety and welfare of the community.
- B. Legislative intent. This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the community by creating regulations for the installation and use of battery energy storage systems, with the following objectives:
- (1) To provide a regulatory scheme for the designation of properties suitable for the location, construction, and operation of battery energy storage systems;
 - (2) To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems;
 - (3) To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife, and other protected resources; and
 - (4) To support the transition to renewable energy sources.
- C. Definitions. As used in this article, the following terms shall have the meanings indicated:

ANSI — American National Standards Institute.

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 twelve-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1, Tier 2, or Tier 3 battery energy storage system as follows:

- (1) Tier 1 battery energy storage systems have an aggregate energy capacity less than or equal to 80 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology. All Tier 1 battery energy storage systems located on residential properties shall comply with the Residential Code of New York State.
- (2) Tier 2 battery energy storage systems have an aggregate energy capacity between 81 and 600 kWh or are comprised of more than one energy storage

system technology in a room or enclosed area.

- (3) Tier 3 battery energy storage systems have an aggregate energy capacity greater than 600 kWh and, if in a room or enclosed area, consist of only one energy storage system technology.

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 article, batteries utilized in consumer products are excluded from these requirements.

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.

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

- (1) The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
- (2) No other occupancy types are permitted in the building.
- (3) 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 system and other energy systems.
- (4) Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage systems 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 exterior of the building 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 Electric Code.

NFPA — National Fire Protection Association.

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.

D. Applicability.

- (1) The requirements of this article shall apply to all battery energy storage systems permitted, installed, or modified in the Town of Islip after the effective date of this article, excluding general maintenance and repair.
- (2) Battery energy storage systems legally constructed or installed prior to the effective date of this article shall not be required to meet the requirements of this article.
- (3) Modifications to, retrofits or replacements of an existing battery energy storage system that increase the total designed discharge duration or power rating shall be subject to this article.

E. General requirements.

- (1) A building permit, battery energy storage system permit, and a certificate of electrical compliance shall be required for installation of all battery energy storage systems.
- (2) All battery energy storage systems, all dedicated-use buildings, and all other buildings or structures that contain or are otherwise associated with a battery energy storage system shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code.

F. Permitting requirements for battery energy storage systems.

- (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. Tier 1 battery energy storage systems shall maintain minimum side and rear yards of 10 feet and shall meet the front yard requirements of the zoning district in which they are located.
- (2) Tier 2 battery energy storage systems shall be permitted in the following zoning districts subject to the Uniform Code and site plan review, which may be waived at the discretion of the Town Engineer:
 - (a) Business 1, Business 2, Business 3, Industrial 1, Industrial 2, Industrial Corridor, and Industrial Transition.

- (b) Tier 2 battery energy storage systems shall meet the requirements of the principal building within the zoning district in which they are located.
 - (c) Where a Tier 2 battery energy storage system will be located within 200 feet of a residential use or zone, a Planning Board special permit shall also be required.
- (3) Tier 3 battery energy storage systems shall be permitted in the following zoning districts subject to the Uniform Code, site plan review, and a Planning Board special permit:
- (a) Industrial 1, Industrial 2, and Industrial Transition.
 - (b) Tier 3 battery energy storage systems shall meet the requirements of the principal building within the zoning district in which they are located.
 - (c) Tier 3 battery energy storage systems that are accessory to a permitted principal use and are under 2,000 square feet of total area dedicated to the use do not require a Planning Board special permit, unless they are located within 200 feet of a residential use or zone.
- G. Special permit standards.
- (1) Fencing requirements. Unless housed in a dedicated-use building, Tier 3 battery energy storage systems, including all mechanical equipment, shall be enclosed by a six-foot fence with a self-locking gate to prevent unauthorized access. For systems that are over six-feet in height, an eight-foot fence shall be required to properly screen the use.
 - (2) Screening and visibility. Tier 2 and Tier 3 battery energy storage systems shall be screened from view from adjacent properties using architectural features, earth berms, walls, fencing, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area. A minimum of 25 feet of landscaping shall be required along all street frontages for all Tier 3 battery energy storage systems. Architectural review shall be required for all Tier 2 and 3 systems.
- H. Site plan application requirements. For a Tier 2 or 3 battery energy storage system requiring site plan approval, the applicant's submission shall include the items located in the appendices of the Subdivision and Land Development Regulations, in addition to the typical site plan requirements.
- I. Additional requirements for Tier 2 and 3 battery energy storage systems.
- (1) Utility lines and electrical circuitry. All on-site utility lines shall be placed underground in appropriate conduits to the extent feasible and as permitted by the serving utility. An exception may be made for the main service connection at the utility company right-of-way and new interconnection equipment.
 - (2) Signage.

- (a) 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 fire suppression system installed in the area of battery energy storage systems, and twenty-four-hour emergency contact information, including a call-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.
- (3) Lighting. All lighting associated with battery energy storage systems shall be in compliance with Article LII, Exterior Lighting Standards.
 - (4) Vegetation and tree cutting. Areas within 10 feet on each side of Tier 2 or 3 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 cover 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, and is only permitted in association with an approved site plan or land clearing permit.
 - (5) Noise. All noise associated with battery energy storage systems shall be in compliance with Town Code Chapter 35.

J. Commissioning and decommissioning plans.

- (1) 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. Where commissioning is required by the Uniform Code, battery energy storage system commissioning shall be conducted by a New York State (NYS) licensed professional engineer after the installation is complete, but prior to final inspection and approval. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Chief Fire Marshal or his/her designee prior to final inspection and approval and maintained at an approved on-site location. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning.
- (2) Decommissioning plan. The applicant shall submit a decommissioning plan for Tier 2 or Tier 3 battery energy storage systems, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal of the systems from the facility. The decommissioning plan shall include and address:
 - (a) A narrative description of the activities to be accomplished, including

who will perform the 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.
- (3) Decommissioning fund or cash bond. The owner and/or operator of a Tier 2 or 3 battery energy storage system shall continuously maintain a fund or submit a cash bond payable to the Town of Islip, in a form approved by the Town of Islip, for the removal of the battery energy storage system, in an amount to be determined by the Town of Islip, for the period of the life of the facility. All costs of the financial security shall be borne by the applicant.
- (4) Tier 1 systems are not subject to the requirements of Subsection J(1) or (2) above, but will require a statement from the system installer certifying compliance with decommissioning requirements.
- K. Ownership changes. If the owner of the battery energy storage system changes or the owner of the underlying property changes, the special permit shall remain in effect, provided that the successor owner or operator assumes, in writing, all of the obligations of the special permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Chief Fire Marshal 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 Chief Fire Marshal in writing. The special permit and all other local approvals for the battery energy storage system shall be void if a new owner or operator fails to provide written notification to the Chief Fire Marshal in the required time frame.

Reinstatement of a void special permit will be subject to the same review and approval processes for new applications under this article.

L. Safety.

- (1) System certification. Battery energy storage systems and equipment shall be listed by a nationally recognized testing laboratory (standards for battery energy storage systems and equipment) or approved equivalent.
- (2) Site access. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 2 or 3 battery energy storage system is located in an ambulance district, the local ambulance corps.
- (3) Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.
- (4) Emergency operations plan. A copy of the approved emergency operations plan shall be given to the system owner/operator, the local fire department, and Fire Marshal. A permanent copy shall also be placed in an approved location to be 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, 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 battery energy storage management system 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 battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
 - (g) Other procedures as determined necessary by the Town of Islip to provide for the safety of occupants, neighboring properties, and emergency responders.
 - (h) Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.
- M. Abandonment. The battery energy storage system shall be considered abandoned when it ceases to operate for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town of Islip may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2 or 3 battery energy storage system and restoration of the site in accordance with the decommissioning plan.
- N. 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 zoning or land use regulations of the Town of Islip.
- O. 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.