

**LOCAL LAW #2-2023 BATTERY ENERGY STORAGE**

**RESOLUTION 74-2023**

On a motion of Council McIntyre, seconded by Council Miller the following resolution was

ADOPTED Aye 4 Lewis, McIntyre, Miller, Thompson

Nay 0

Absent 1 Farrell

RESOLVED The Portland Town Board adopts Local Law #2-2023 Battery Energy Storage.

**TOWN OF PORTLAND  
LOCAL LAW NO. 2 OF 2023**

**A LOCAL LAW ENACTING REGULATIONS FOR  
BATTERY ENERGY STORAGE SYSTEMS**

Be it enacted by the Town of Board of the Town of Portland, County of Chautauqua, and State of New York, as follows:

**SECTION 1. AUTHORITY.**

This local law is promulgated pursuant to the authority granted by:

1. Article IX of the New York State Constitution, §2(c)(10);
2. New York Statute of Local Governments, §10(1) and (7);
3. New York Municipal Home Rule Law, §10(1)(i) and (ii) and §10(1)(a), (11), (12), and (14);
4. New York Town Law §130 (11)(peace, good order and safety), (15)(promotion of public welfare);  
and
5. New York Town Law §64(17-a)(protection of aesthetic interests), (23)(general powers).

**SECTION 2. BATTERY ENERGY STORAGE SYSTEMS LAW**

A new Section 650 is hereby added to the Town of Portland Zoning Code, which shall provide as follows:

**Section 650 - Battery Energy Storage Systems**

- A. Purpose. This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of Town 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

B. Definitions. For purposes of this sub-Section, the following terms shall have the meaning indicated:

**ANSI:** American National Standards Institute

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

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

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

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

**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.
- d. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, 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.
  - (b) A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

**ENERGY CODE:** The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

**FIRE CODE:** The fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

**NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL):** A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

**NEC:** National Electric Code.

**NFPA:** National Fire Protection Association.

**NON-DEDICATED-USE BUILDING:** All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

**NON-PARTICIPATING PROPERTY:** Any property that is not a participating property.

**NON-PARTICIPATING RESIDENCE:** Any residence located on non-participating property.

**OCCUPIED COMMUNITY BUILDING:** Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, daycare facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

**PARTICIPATING PROPERTY:** A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage system is constructed on the property.

**UNIFORM CODE:** the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

C. Applicability.

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

D. General Requirements.

1. A building permit and an electrical permit shall be required for installation of all battery energy storage systems.
2. Issuance of permits and approvals by the Town Board shall include review pursuant to the State Environmental Quality Review Act.
3. All battery energy storage systems, all Dedicated Use Buildings, and all other buildings or structures that (1) contain or are otherwise associated with a battery energy storage system and (2) subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town Code.

E. Permitting For Tier 1 Battery Energy Storage Systems. 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.

F. Permitting For Tier 2 Battery Energy Storage Systems. Tier 2 Battery Energy Storage Systems are permitted through the issuance of a special use permit within the Agriculture (A) and Conservation Residential (CR) Districts, and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section.

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

- (a) Reviewed by the Town Board for completeness. An application shall be complete when it addresses all matters listed in this Local Law including, but not necessarily limited to, (a) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and (b) matters relating to the proposed battery energy storage system and Floodplain, Utility Lines and Electrical Circuitry, Signage, Lighting, Vegetation and Tree-cutting, Noise, Decommissioning, Site Plan and Development, Special Use and Development, ownership Changes, Safety, and Permit Time Frame and Abandonment. Applicants shall be advised within 20 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 Town Board 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 1,000 feet of the property at least 10 days prior to such hearing. Proof of mailing shall be provided to the Town 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 Town 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 Town Board and the Applicant.
2. 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 battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including reach-back phone number.
    - (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 the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
  5. Vegetation and Tree-cutting. Areas within 20 feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.
  6. Noise. The 1-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of 50 dBA as measured at the outside wall of any non-participating residence or occupied community building. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system 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, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:

- (1) A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;
  - (2) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
  - (3) The anticipated life of the battery energy storage system;
  - (4) The estimated decommissioning costs and how said estimate was determined;
  - (5) The method of ensuring that funds will be available for decommissioning and restoration;
  - (6) The method by which the decommissioning cost will be kept current;
  - (7) The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
  - (8) 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 owner and/or operator of the energy storage system, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town for the removal of the battery energy storage system, in an amount to be determined by the Town, 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 Battery Energy Storage System requiring a Special Use Permit, 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 three-line electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
  - (d) A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

- (e) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of 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 battery energy storage system.
- (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. 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 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 shall be provided to the Town's Code Enforcement Officer 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.
- (j) Operation and Maintenance Manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.
- (k) 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.
- (j) Prior to the issuance of the building permit or final approval by the Town Board, but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.
- (l) Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. 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:
  - (1) 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.
  - (2) Procedures for inspection and testing of associated alarms, interlocks, and controls.
  - (3) Procedures to be followed in response to notifications from the Battery Energy Storage 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.

- (4) 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.
  - (5) Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
  - (6) 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.
  - (7) Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.
  - (8) 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.
9. Special Use Permit Standards.
- (a) Setbacks. Tier 2 Battery Energy Storage Systems shall be set back a minimum of 300 feet from any property line and a minimum of 1,000 feet from any residential building, school, place of public worship or designated historic district or landmark, and a minimum of 1,000 from any property within the Residential (R) District. If the applicant controls multiple, contiguous parcels, only the exterior boundary of the aggregated parcels shall be considered the “property line” for purposes of determining setbacks.
    - (1) The Town Board may consider requests to reduce these setback distances by up to 50% where the Battery Energy Storage System and/or Dedicated-Use Building are designed to have the aesthetic appearance of a building that would be typical in the Town of Portland, as opposed to an undisguised box or trailer-like appearance.
  - (b) Height. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations for principal structures of the underlying zoning district, but in no case shall exceed 30 feet.
  - (c) Fencing Requirements. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a fence at least 7 feet in height 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 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.



10. Ownership Changes. If the owner of the battery energy storage system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Code Enforcement Officer of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Code Enforcement Officer in writing. The special use permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the Code Enforcement Officer in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications under this Local Law.

#### G. Safety.

1. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and Equipment) or approved equivalent, with subcomponents meeting each of the following standards as applicable:
  - (a) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications),
  - (b) UL 1642 (Standard for Lithium Batteries),
  - (c) UL 1741 or UL 62109 (Inverters and Power Converters),
  - (d) Certified under the applicable electrical, building, and fire prevention codes as required.
  - (e) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 (or approved equivalent) and applicable codes, regulations and safety standards may be used to meet system certification requirements.
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 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.

#### H. Permit Time Frame and Abandonment.

1. The Special Use Permit and site plan approval for a battery energy storage system shall be valid for a period of 12 months, provided that a building permit is issued for construction and construction is commenced. If construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Town Board, within 24 months after approval, the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 30 months, the approvals shall expire.

2. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2 Battery Energy Storage System and restoration of the site in accordance with the decommissioning plan.

I. Reimbursement of Fees and Expenses.

1. An Applicant shall reimburse the Town for any fee or expense incurred in hiring subject matter experts and attorneys to review whether a Battery Energy System proposed for siting pursuant to Article 10 of the New York Public Service Law or Article 94-c of the Executive Law complies with the substantive provision of this local law.
2. The applicable fees for any review or permit required by this local law shall be set from time to time by resolution of the Town Board.
3. An Applicant for either state or local siting approval shall deliver to the Town Board, along with its application, if local approval is sought, or one-hundred eighty (180) days prior to the filing of an Article 10 or Article 94-C application, if applicable, an amount equal to one percent (1%) of the estimated cost of the project (the "Initial Deposit"). This sum shall be held by the Town in a non-interest-bearing account and shall be available to the Town to pay consultants and attorneys engaged by the Town to assist in its review of and preparation for an Article 10 or Article 94-c application. Should the Town be awarded intervenor funds, it shall switch to and deplete those funds before making further use of the Initial Deposit. Following the approval or denial of the state or local application, the Town shall return to the Applicant any excess funds remaining in escrow. If the escrow account has been depleted prior to approval or denial of the application, the Applicant shall deposit such funds necessary for the Town to pay any outstanding consulting fees.
4. If the proposed Battery Energy Storage System is related to and part of a proposed Solar Energy System or Wind Energy System, then the Town may hold a single escrow account for both projects.

- J. 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 Town.

**SECTION 3. SEVERABILITY.**

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

**SECTION 4. EFFECTIVE DATE.**

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.