

LOCAL LAW NO. [1] OF 2025

A LOCAL LAW TO AMEND THE CODE OF THE TOWN OF FORESTBURGH TO ESTABLISH REGULATIONS FOR BATTERY ENERGY STORAGE SYSTEMS

BE IT ENACTED by the Town Board of the Town of Forestburgh, Sullivan County, New York, as follows:

Section 1. Title.

This Local Law shall be known as the “Battery Energy Storage System Law of the Town of Forestburgh.”

Section 2. Legislative Intent and Findings.

The Town Board finds that the development of clean energy resources, including battery energy storage systems, is consistent with the goals of the State of New York to promote renewable energy and reduce greenhouse gas emissions. The Board further finds that such systems must be appropriately sited, designed, and maintained to protect the health, safety, and welfare of the residents of the Town, the natural environment, and the character of the community.

It is the intent of this Local Law to provide for the regulation of battery energy storage systems in a manner that is consistent with the Uniform Fire Prevention and Building Code, the Energy Code of the State of New York, and nationally recognized standards including National Fire Protection Association (NFPA 855) and the National Electric Code (NEC).

Section 3. Authority.

This Local Law is enacted pursuant to the Municipal Home Rule Law of the State of New York and Article 16 of the Town Law.

Section 4. Definitions.

For the purposes of this Local Law, the following terms shall have the meanings set forth below. Where not defined herein, words shall have their ordinary meaning.

1. **Battery Energy Storage System** – A group of one or more devices, containers, modules, or structures, which are capable of storing energy in order to supply electrical energy at a future time.
2. **Tier 1 Battery Energy Storage System** – A system with an aggregate energy capacity less than or equal to 600 kilowatt-hours (kWh).
3. **Tier 2 Battery Energy Storage System** – A system with an aggregate energy capacity greater than 600 kilowatt-hours (kWh).
4. **Dedicated-Use Building** – A building that is used exclusively for housing and operating a battery energy storage system.

5. **Decommissioning** – The removal, dismantling, and proper disposal of a battery energy storage system and associated equipment.
6. **Emergency Operations Plan (EOP)** – A written plan developed by the system owner or operator, in consultation with the Town and local fire officials, that outlines emergency response procedures.

Section 5. Applicability.

- A. This Local Law shall apply to all battery energy storage systems proposed, installed, or modified after its effective date.
- B. Modifications to existing systems that increase capacity by more than ten percent (10%) shall be subject to the provisions of this Local Law.
- C. Systems lawfully in existence prior to the effective date of this Local Law shall be deemed nonconforming uses and may continue subject to § 280-A of the Town Law.

Section 6. Permitted Uses.

- A. **Tier 1 Systems.** Tier 1 Battery Energy Storage Systems shall be permitted in all zoning districts, subject to the bulk requirements applicable to public utility facilities, and shall require only a building permit and electrical permit.
- B. **Tier 2 Systems.** Tier 2 Battery Energy Storage Systems shall be permitted only by special permit and site plan approval of the Planning Board, in accordance with Town Code §§ 180-34, 180-35 and 180-36, and only in the following zoning districts:
 1. Rural Residential District (RR) on parcels of at least 100,000 sq ft- 2.3 acres.
 2. Rural Conservation District (RC) on parcels of at least 100,000 sq ft- 2.3 acres.

Section 7. Dimensional and Siting Requirements (Tier 2). Tier 2 Battery Energy Storage Systems shall comply with the following bulk standards:

- A. Minimum setback from any existing dwelling unit or community building (school, daycare, house of worship): **three hundred (300) feet.**
- B. Minimum setback from all other lot lines: **one hundred fifty (200) feet.**
- C. Maximum structure height: fifteen (15) feet for cabinets; thirty-five (35) feet for dedicated-use buildings.
- D. Lot coverage shall not exceed [50] percent.
- E. Fencing Requirements. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a minimum 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. No variance for fence height shall be required.

E. 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. Screening shall be provided by a combination of fencing and landscaping sufficient to reasonably shield the system from adjacent properties. Removal of trees should be minimized to the extent possible.

F. 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.

Section 8. Additional Site Plan Requirements.

A. For any Tier 2 Battery Energy Storage System requiring a Special Use Permit, site plan approval shall also be required. In addition to the information otherwise required under the Town Code § 180-35, any application for site plan approval shall include the following:

1. A survey or drawing showing property lines and existing physical features of the project site, including roads.
2. A plan showing proposed changes to the landscape of the site, including grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
3. A one-line or three-line electrical diagram detailing the Battery Energy Storage System layout, associated components, and electrical interconnection methods, including all National Electrical Code compliant disconnects and over-current devices.
4. A preliminary equipment specification sheet documenting the proposed system components, inverters, and associated electrical equipment. A final specification sheet shall be submitted prior to the issuance of a building permit.
5. The name, address, and contact information of the proposed or potential system installer and the owner and/or operator of the Battery Energy Storage System. The information for the final installer shall be provided prior to issuance of a building permit.
6. The name, address, phone number, and signature of the applicant, as well as all property owners, demonstrating consent to the application and the use of the property for the Battery Energy Storage System.
7. The zoning district designation(s) for the parcel(s) of land comprising the project site.
8. A Commissioning Plan documenting and verifying that the system and its associated controls and safety systems are in proper working condition in accordance with the

Uniform Code. Where commissioning is required by the Uniform Code, such commissioning shall be conducted by a New York State Licensed Professional Engineer after installation but prior to final inspection and approval. Any corrective action plan for open or continuing issues shall also be provided. A report describing the results of commissioning and initial acceptance testing shall be submitted to the Code Enforcement Officer or Reviewing Board prior to final inspection and approval, and a copy shall be maintained on site in an approved location.

9. A Fire Safety Compliance Plan documenting and verifying that the system and its associated controls and safety systems comply with the Uniform Code.
10. An Operation and Maintenance Manual describing continuing system maintenance and property upkeep, as well as design, construction, installation, testing, and commissioning information, in accordance with the Uniform Code.
11. Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, where applicable, and to such additional standards as may be required by the Planning Board.
12. Engineering documents signed and sealed by a New York State Licensed Professional Engineer. Such documents shall be submitted prior to issuance of a building permit or final site plan approval, but need not be included at the time of the initial application.
13. An Emergency Operations Plan (EOP), in the form designated by the Planning Board, a copy of which shall be provided to the system owner, the local fire department, and the local fire code official, with a permanent copy maintained at the facility in an approved on-site location. The EOP shall include, at a minimum:
 - a. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions, and for safe start-up following cessation of such conditions.
 - b. Procedures for inspection and testing of alarms, interlocks, and controls.
 - c. Procedures to be followed in response to notifications from the Battery Energy Storage Management System indicating potentially dangerous conditions, including shut-down of equipment, summoning service personnel, and notifying the fire department of potentially hazardous conditions.
 - d. Emergency procedures to be followed in the event of fire, explosion, release of liquids or vapors, damage to critical parts, or other potentially dangerous conditions. Such procedures may include sounding alarms, notifying emergency responders, evacuating personnel, de-energizing equipment, and extinguishing fires.
 - e. Response considerations equivalent to a Safety Data Sheet (SDS), addressing response safety concerns and extinguishment methods when an SDS is not otherwise required.
 - f. Procedures for safely handling and removing system components damaged in a fire or other emergency event, including current contact information for qualified personnel.

- g. Any other procedures determined necessary by the Town to protect the safety of occupants, neighboring properties, and emergency responders.
- h. Procedures and schedules for conducting drills of the EOP and training of local first responders on plan contents and appropriate response measures.

Section 9. Safety and Fire Protection.

A. System Certification. All Battery Energy Storage Systems and associated equipment shall be listed by a Nationally Recognized Testing Laboratory (NRTL) to UL 9540 (Standard for Battery Energy Storage Systems and Equipment), or an approved equivalent. Subcomponents shall, as applicable, be listed or certified to the following standards:

1. UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications);
2. UL 1642 (Standard for Lithium Batteries);
3. UL 1741 or UL 62109 (Standards for Inverters and Power Converters);
4. Certification under applicable electrical, building, and fire prevention codes.

Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 (or approved equivalent) and all applicable codes, regulations, and safety standards may be accepted.

B. Clearances and Enclosures. Battery Energy Storage Systems, components, and all associated ancillary equipment shall have required working space clearances and shall be installed within weatherproof enclosures rated for the environmental conditions of the site. All electrical circuitry shall comply with NFPA 70 (National Electrical Code) and be clearly marked for identification. Combustible vegetation shall be removed within ten (10) feet of the system perimeter.

C. Signage. The signage shall be in compliance with American National Standards Institute (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. As required by the National Electric Code (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.

D. Site Access. Adequate access for emergency vehicles, water supply, Knox boxes, and signage shall be provided as approved by the Fire Chief. Site access, including snow and ice removal, shall be maintained at all times at a level acceptable to the local fire department and, where applicable, the local ambulance corps.

E. Local Coordination. Fire Department training and coordination shall be required prior to commissioning.

Section 10. Noise and Lighting.

A. The 1-hour average noise generated by any system shall not exceed sixty (60) dBA between as measured at the property line. 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.

B. Lighting shall be the minimum necessary for safety and security and shall employ full cut-off fixtures. Motion-activated lighting is preferred.

Section 11. Operation and Maintenance.

A. The owner or operator shall maintain an EOP on file with the Town and the Fire Department at all times.

B. Remote monitoring and automatic shut-down capabilities shall be maintained.

C. The owner or operator shall notify the Town and the Fire Department of any incident within twenty-four (24) hours.

D. Change of ownership or operator shall be reported to the Town within thirty (30) days, with assumption of all permit conditions.

Section 12. Environmental Protections.

A. Systems shall comply with applicable stormwater regulations, including the State Pollutant Discharge Elimination System (SPDES) program.

B. No system shall be located within wetlands or floodplains unless expressly authorized with mitigation measures.

C. A hazardous material disposal plan shall be provided for both routine maintenance and post-incident waste removal.

Section 13. Decommissioning.

A. A decommissioning plan shall be required and approved as part of the special permit in the form designated by the Planning Board. At minimum, decommissioning shall include removal of all structures, equipment, and batteries, and site restoration.

B. Financial security shall be provided in the form of a bond, letter of credit, or escrow in an amount equal to one hundred twenty-five percent (125%) of the certified decommissioning cost, updated at least every five (5) years. All costs of the financial security shall be borne by the applicant.

C. Decommissioning shall occur within twelve (12) months of cessation of operations. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for 180 days or more. 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. Any costs incurred by the Town in excess of the financial security shall be the responsibility of the property owner and levied as a lien against the property.

Section 14. Ownership Changes.

In the event of a change in ownership of a Battery Energy Storage System, or a change in ownership of the real property upon which such system is located, the special use permit, site plan approval, and decommissioning plan shall remain in effect, provided that the successor owner or operator, within thirty (30) days of such change, submits written notice to the Code Enforcement Officer or Zoning Enforcement Officer acknowledging the transfer of ownership or operation and expressly assuming all obligations and conditions of the special use permit, site plan approval, and decommissioning plan.

Failure of a successor owner or operator to provide such written notice within the required timeframe shall render the special use permit and all related local approvals void. Reinstatement of a void permit shall be subject to the same review and approval processes as a new application under this Local Law.

Section 15. SEQRA Review.

All Tier 2 Battery Energy Storage Systems shall be classified as Type I actions under the State Environmental Quality Review Act (SEQRA). The Town Board or Planning Board, as appropriate, shall act as lead agency or coordinate with other involved agencies.

Section 16. Enforcement.

This Local Law shall be enforced by the Code Enforcement Officer. Violations shall be subject to the penalties provided in Town Code Chapter 180 and in § 268 of the Town Law.

Section 17. Severability.

If any section or provision of this Local Law is held invalid by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining sections or provisions.

Section 18. Effective Date.

This Local Law shall take effect immediately upon filing with the Secretary of State.