

Local Law Filing

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one.)

of Amsterdam

FILED
STATE RECORDS
SEP 26 2024

Local Law No. 2 of the year 2024

A local law Town of Amsterdam Energy Storage System Local Law
(Insert Title)

DEPARTMENT OF STATE

Be it enacted by the Town Board of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of Amsterdam

as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Town of Amsterdam

LOCAL LAW NO. 2 OF THE YEAR 2024

**A LOCAL LAW TO AMEND THE TOWN OF AMSTERDAM ZONING LAW TO ADD A
NEW SECTION 37 SMALL-SCALE BATTERY ENERGY STORAGE SYSTEMS TO
ARTICLE VIII SUPPLEMENTARY REGULATIONS AND ENACT OTHER PROVISIONS
RELATED TO BATTERY ENERGY STORAGE SYSTEMS**

Section 1. Legislative Intent

It is the intent of this local law to amend the Town of Amsterdam Zoning Law, as the same may have been amended from time to time, to enact provisions providing for small-scale battery energy storage system (BESS) installations in the Town, as defined in this local law through addition of a new section, Section 37 Battery Energy Storage Systems, to Article VIII (Supplementary Regulations) of the Town of Amsterdam Zoning Law. It is further the intent and purpose of this local law to, in accordance with the Town of Amsterdam Comprehensive Plan, prohibit the development of utility-scale BESS within the Town. Accordingly, this local law modifies certain use definitions relating to prohibited uses, energy storage systems, and public utilities.

Section 2. Authority

This local law is adopted by the Town Board of Town of Amsterdam (hereinafter referred to as the "Town Board") pursuant to its authority to adopt local laws under Article IX of the New York State Constitution; Articles 2 and 3 of the Municipal Home Rule Law; Article I of the Town Zoning Law, particularly Section 2 which authorize the Town to adopt zoning provisions that promote health and general welfare, encourage the most appropriate use of land throughout the Town, encourage development in accordance with a comprehensive plan and professional planning techniques, and improve the quality of life throughout the Town.

Section 3. Severability

If a court determines that any clause, sentence, paragraph, subdivision, or part of this local law or the application thereof to any person, firm or corporation, or circumstance is invalid or unconstitutional, the court's order or judgment shall not affect, impair, or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 4. Short Title

This local law may be cited and referred to as the "Town of Amsterdam Energy Storage System Local Law."

Section 5. Effective Date

This local law shall take effect immediately, upon filing with the Secretary, as provided under NYS law.

Section 6. Article II- Definitions Section 4 Amendments

Article II- Definitions Section 4 of the Town of Amsterdam Zoning Law is hereby amended to add the following definitions:

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 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, an electric motor vehicle, or a portable energy storage system for temporary use. A battery energy storage system is classified as follows:

- A. Small-Scale 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. Ground-Mounted Small Scale Battery Energy Storage System are further defined as those which may be installed in a dedicated-use building, within a cabinet, and/or a walk-in unit.
- B. Utility-Scale Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh, are comprised of more than one storage battery technology in a room or enclosed area, or are co-located with Solar Energy Systems and other energy generation facilities designed primarily to produce energy for offsite consumption.

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.

TOWN OF AMSTERDAM BATTERY ENERGY STORAGE SYSTEM PERMIT: The Town's minimum submittal requirements for electrical and structural plan review applicable to small-scale battery energy storage systems with an aggregate energy capacity less than or equal to 600kWh, based on the 2020 NYSERDA Battery Energy Storage System Model Permit, as may be amended.

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.

The following definitions are hereby replaced in their entirety and amended, as follows:

PUBLIC UTILITY STATION OR STRUCTURE: A facility other than a Personal Wireless Service Facility, Solar Energy Equipment and Systems, or Battery Energy Storage System for the provision of public utility services, including facilities constructed, altered or maintained by utility corporations, either public or privately owned, or government agencies, necessary for the provision of electricity, gas, steam, heat, communication, water, sewage, collection of other such services to the general public. Such facilities shall include poles, wires, mains, drains, sewers, pipes, conduits, cables, alarms and call boxes and other similar equipment, but shall not include offices or administration buildings. For purposes of the Zoning Law, Personal Wireless Services Facility, defined separately in the Zoning Law, shall not be governed by the Zoning regulations which apply to the broader definition of Public Utility station or structures but shall be governed by the regulations of the Personal Wireless Services Facilities Overlay District which specifically regulates this category of public utilities.

SOLAR ENERGY EQUIPMENT AND SYSTEMS: Solar collectors, controls, heat pumps, heat exchangers, and or other materials, hardware or equipment necessary to the process by which solar radiation is collected, converted into another form of energy, stored, protected from unnecessary dissipation and distributed. Solar systems include solarthermal, photovoltaic and concentrated solar. For energy storage devices, refer to Battery Energy Storage System in this Section.

Section 7. Utility-Scale Battery Energy Storage Systems a Prohibited Use

Section 7(a). With respect to Utility-Scale Battery Energy Storage Systems, as defined in Section 6 of this local law, the Town Board makes the following findings:

1. Utility-Scale Battery Energy Storage System (UBESS) failure has the potential to undermine public health, safety and welfare, will potentially be situated in locations without access to water supply for fire suppression, and will overtax the Town's first responders. BESS failure and ensuing thermal runaway and fire can produce a range of toxic gasses and particulates, including several highly toxic compounds including benzene, toluene, styrene, biphenyl, hydrogen fluoride and many others. That the probability of occurrence of such failures is not small was demonstrated during the summer of 2023, during which UBESS facilities in Jefferson, Orange and Suffolk Counties in NYS burned. There is also widespread uncertainty about the potential environmental effects of toxic emissions that are likely to be released due to fires at UBESS facilities.

2. The Town Board, therefore, finds that allowing UBESS in the Town would be inconsistent with the following goals and objectives set forth in the Town of Amsterdam Comprehensive Plan:
 - Allowing UBESS as a permitted use anywhere in the Town is contrary to the overall goal set forth in the Comprehensive Plan, which is to “Promote land uses that complement and enhance the Town’s existing development patterns and are consistent with the Town’s rural character, while recognizing natural resources and constraints on development,” for the following reasons: failure of UBESS present serious safety risks to adjacent land uses and to the natural environment and UBESS, as industrial energy storage facilities, are inconsistent with the Town’s rural character.
 - Allowing UBESS as a permitted use in the Town’s Agriculture, R-1 Residential, and R-2 Residential districts is contrary to the stated goal to “Preserve the Town’s Rural Character and Open Spaces” and its objectives and implementation, i.e., to “Encourage and enhance the preservation of open space in the Town” and “Limit commercial and industrial development to areas proximate to existing development, where it will have the least impact on the rural character of the community,” as UBESS facilities represent commercial and industrial development that would consume open space in a way that is detrimental to the Town’s rural character.
 - Allowing UBESS as a permitted use in the Town is not consistent with the stated goal to “Preserve the Natural Environment,” as UBESS failure carries serious risks due to potential emission and environmental release of toxic substances, and their deposition on land and in water. The stated objective associated with this goal is to “Protect and preserve the natural resources of the Town through land use regulations and enforcement,” which is to be implemented by “Prohibit[ing] uses that are detrimental to the natural environment.” Catastrophic failure of UBESS poses analogous risks as failure of open petroleum or chemical tank farms, which are Prohibited Uses in the Town, and therefore, are similarly detrimental to the natural environment.
3. In addition, the Planning Board further finds that UBESS would be contrary to the purposes of the future land use plan and zoning districts, as identified in the Town’s Comprehensive Plan and Zoning Law.
 - R-1 Residential District, R-2 Residential District, R-M Mobile Home Residential District. UBESS are non-residential, industrial energy storage facilities, the catastrophic failure of which poses significant public health, safety, and welfare risks. Therefore, UBESS are inconsistent with stated purposes each of these residential districts, which are as follows:

- R-1: “to preserve established single-family residential neighborhoods. This district will permit only single-family homes, home occupations, family and group family day care homes, community parks and public buildings”;
- R-2: “to create areas for higher density residential development. These districts are located to buffer single-family residential areas from commercial development”; and
- R-M: “preserve the community character of the Town.”
- B-1 Business District. UBESS are industrial energy storage facilities, the catastrophic failure of which poses significant public health, safety, and welfare risks, and do not involve high-traffic retail or other types of business or commercial activity. The stated purpose of this district is to “provide a location for high-traffic retail uses along the existing commercial corridors of Route 30 and 67E, and a smaller strip in Tribes Hill.”
- B-2 Business District. The intent of this district is to provide “a mix of smaller scale commercial and residential uses. These districts are located to buffer existing R-1 residential neighborhoods from intensive commercial and manufacturing uses.” As large-scale industrial facilities that may occupy tens or 100’s of acres, UBESS are not “smaller scale” or commercial or residential uses. In addition, UBESS are industrial energy storage facilities that are inappropriate as buffers to residential areas due to the health and safety risks their failure poses.
- M-1 Manufacturing/Mixed Use District. UBESS are industrial-scale energy storage facilities the failure of which is associated with a high catastrophic potential and are, therefore, inconsistent with the stated purpose of this zone to “allow compatible light industrial, commercial and professional businesses to be intermixed in a planned.

Section 7(b). In accordance with the findings set forth in this Section, Article II- Definitions Section 4 of the Town of Amsterdam Zoning Law is hereby repealed and replaced, as follows:

USE, PROHIBITED: Within a district, a use that is not listed as a permitted or special permit use is a prohibited use. In addition, uses that are detrimental to the natural environment are specifically prohibited within the Town, including landfills, open mining, strip mining, open composting, salvage or junkyards, debris dumping, open petroleum or chemical tank farms, and utility-scale battery energy storage systems.

Section 8. Article VIII- Supplementary Regulations Amendments

Article VIII- Supplementary Regulations of the Town of Amsterdam Zoning Law is hereby amended to add a new Section 37 as follows:

1. Applicability

- A. The requirements of this Zoning Law shall apply to all battery energy storage systems permitted, installed, or modified in the Town of Amsterdam after the effective date of applicable amendments to this Section, excluding general maintenance and repair.

- B. Battery energy storage systems constructed or installed prior to the effective date of applicable amendments to this Zoning Law shall not be required to meet the requirements of this Section.
- 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.

2. General Requirements

- A. A building permit and an electrical permit shall be required for installation of all battery energy storage systems. The building permit shall be administered in accordance with Town requirements, including this Zoning Law.
- B. Issuance of permits and approvals under this Zoning Law shall include review pursuant to the State Environmental Quality Review Act, as appropriate.
- C. 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) are subject to the Uniform Code and/or the Energy Code shall be designed, erected, installed, and operated 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, Fire Code, and the Town Code.
- D. Application fees. Application for construction of a battery energy storage system shall be subject to the payment of fees in amounts indicated in the Town Schedule of Fees as adopted by the Town Board.

3. Permitting Requirements for Small-Scale Battery Energy Storage Systems

- A. Small-Scale Battery Energy Storage Systems shall be permitted in all zoning districts, subject to the Uniform Code and the Town of Amsterdam Battery Energy Storage System Permit, and exempt from site plan review (except as noted in Section 37(3)(B)(iii), below).
- B. Ground-mounted Small-Scale Battery Energy Storage Systems are permitted as accessory structures and are subject to the following requirements:
 - i. The ground-mounted Small-Scale Battery Energy Storage System must be located in a side or rear yard.
 - ii. The ground-mounted Small-Scale Battery Energy Storage System shall comply with Article VIII Section 24 with respect to minimum setbacks for accessory structures.
 - iii. Where site plan approval is required elsewhere in the regulations of the Town for the principal use, the Small-Scale Battery Energy Storage System shall be subject to site plan review. In its review of the site plan, the Planning Board shall apply the standards and procedures set forth at Art. VI – Site Plan Review of this local law. Site plan review of Small-Scale Battery Energy Storage System development shall include review of the adequacy, location, arrangement, size, design, screening, accessibility for emergency response purposes, and general site compatibility of proposed ground-mounted Small-Scale Battery Energy Storage System.

- iv. The Planning Board, in its sole discretion, may require submission of a noise analysis, an emergency response plan as part of the site plan application, and/or a decommissioning plan. The Planning Board may require a performance guarantee, in accordance with the provisions of this local law, including Art. VI Section 20(9).
- v. The Planning Board may, in its sole discretion, and after consultation with the responding fire district and/or Town fire marshal, require that the Applicant and/or Operator of the Small-Scale Battery Energy Storage System to provide safety and first responder training. The Town may, from time to time, require training of new personnel, and funding, or other mechanism to cause such training to be provided, as determined by the Town, shall be provided by the owner/operator upon request by the responding fire district.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2024 of the ~~(County)(City)(Town)(Village)~~ of Amsterdam was duly passed by the Amsterdam Town Board on September 18, 2024, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20 , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. *(Elective Chief Executive Officer*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. Such local *(Elective Chief Executive Officer*)* law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

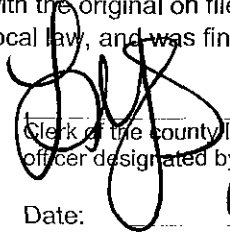
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20 ____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.



Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 9-20-2024

(Seal)