

LOCAL LAW NO. ____-2026

**TOWN OF AMHERST
COUNTY OF ERIE, STATE OF NEW YORK**

**A Local Law Making Amendments to Chapter 203 of the Code of the Town of Amherst, Also
Known As Zoning Ordinance.**

Be it enacted by the Town Board of the Town of Amherst to add a new section as follows:

§6-12 Battery Energy Storage Systems.

6-12-1 Purpose. To provide regulations for Battery Energy Storage Systems (hereafter referred to as “BESS”) to protect the public health, safety, and general welfare, of the community with the following objectives:

- A. To designate locations suitable for construction and operation of BESS;
- B. To ensure that BESS are compatible with adjacent land uses;
- C. To mitigate impacts on the public domain and surrounding areas from BESS;
- D. To provide areas within the Town to support a more resilient electrical energy delivery system that serves the immediate community, while establishing minimum safeguards to protect nearby residential uses and community.

6-12-2 Definitions. (See Section 2-4 “Specific Terms” of Zoning Ordinance)

BATTERY ENERGY STORAGE SYSTEM

HAZARD MITIGATION ANALYSIS

6-12-3 Applicability.

- A. These requirements shall apply to all BESS being established as a use permitted in the Town of Amherst, after the effective date of this Local Law, excluding general maintenance and repair.
- B. BESS constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law, unless modified, replaced or expanded.

- C. BESS that are accessory to an existing electrical substation facility operated and owned by National Grid or New York State Electric and Gas (NYSEG) will not be regulated by this section.
- D. BESS that are accessory to solar energy systems shall be regulated as part of Section 6-10 (Solar Energy).

6-12-4 General Requirements

- A. Site Plan Review pursuant to Section 8-7 of Town Code shall apply to all Tier II and Tier III BESS.
- B. A building permit and an electrical permit shall be required for the installation of all BESS.
- C. An operating permit shall be required for all Tier III BESS.
- D. Issuance of permits shall be from the Building Department and the Fire Safety Inspectors following their determination of compliance with the applicable building, electric, and fire codes.

6-12-5 BESS Tiers and Standards

- A. BESS are divided into three tiers, as follows:
 - 1) Tier I – BESS with an energy storage capacity less than 100 kWh. Permitted as an accessory use in all zoning districts subject to the dimensional standards of the underlying district.
 - 2) Tier II – BESS with an energy storage capacity greater than or equal to 100 kWh, but less than 600 kWh. Permitted as an accessory use in all zoning districts, except any district that permits only one principal residential structure per lot, and subject to the principal use dimensional standards of the underlying district.
 - 3) Tier III – BESS with an energy storage capacity greater than or equal to 600 kWh. Permitted as a principal or accessory use in the Research and Development (RD) and General Industrial (GI) districts only, and subject to the Tier III BESS standards in 6-12-6.

6-12-6 Tier III BESS Standards

- A. Major Site Plan Review and application requirements, as set forth in Part 8 of this Chapter, shall be required.

- B. Setbacks shall conform with the principal use dimensional standards of the underlying district as measured from the fence enclosure, as well as the following supplemental setback standards:
 - 1) Setbacks from residential zoning districts shall be a minimum of 500 feet. The Planning Board may reduce this setback where the Applicant demonstrates, through a site-specific Hazard Mitigation Analysis or equivalent technical study, that a lesser setback will adequately protect public health, safety, and welfare.
 - a) Any reduced setback to a residential zoning district to be considered by the Planning Board as permitted by section 6-12-6B(1) must be evaluated against the following criteria;
 - i. Whether the applicant has demonstrated that alternative sites are not technically feasible and;
 - ii. Whether the reduction in the setback is substantial and;
 - iii. Whether the hazard mitigation analysis has shown that adjacent residential zoned lands will not be impacted; and
 - iv. Whether the applicant has shown that he/she would incur an extraordinary hardship without a reduction in the required setback to the residential zoned properties or residential district line.
 - 2) Setbacks from property lines adjacent to roadways shall be a minimum of 100 feet.
- C. Height of structures shall comply with the principal use dimensional standards of the underlying zoning district.
- D. All mechanical equipment shall be enclosed by an opaque fence.
- E. High Impact Screening ~~per~~ pursuant to Section 7-2-4B(1) shall be provided to minimize views from adjacent properties to the extent practicable, while maintaining safe access for emergency response and operation of the BESS.
- F. One new above grade utility pole shall be permitted per electrical connection to ~~near~~ the utility provider's existing distribution line. All other connection equipment shall be ground mounted and located within the required fence enclosure.
- G. Signage shall be limited to that required for safety purposes.
- H. Lighting shall be limited to that required for safety and operational purposes and shall conform to the requirements of Section 7-3 of this Chapter.
- I. Applicants shall provide an acoustical analysis to demonstrate compliance with Chapter 138 of Town Code (Noise).

- J. A site-specific air quality assessment report evaluating potential air pollutant impacts in the event of a fire or other incidents, including dispersion and risk assessment models if within 500 feet of sensitive uses, including but not limited to, including K-12 public and private schools, hospitals, nursing homes, childcare facilities and assisted living facilities, may be required by the Planning Director as part of site plan review.
- K. Decommissioning. If a BESS ceases to perform its originally intended function for more than 12 consecutive months, the owner and/or operator shall implement the decommissioning plan, to include, but not be limited to:
 - i Removal of above-ground and below-ground equipment, structures and foundations.
 - ii Restoration of the surface grade and soil after removal of equipment to a similar or better condition, that it existed prior to the installation. This includes adding an adequate layer of topsoil where existing topsoil has been removed or eroded.
 - iii Herbaceous revegetation of restored soil areas with native seed mixes, excluding any invasive species.
 - 1) If the owner and/or operator fail to fully implement the decommissioning plan within 180 days, then in addition to other remedies provided by this section or chapter, by New York Town Law §268, or by law or equity, the Town may remove the BESS and restore the property according to the decommissioning plan and to cover these costs to the municipality.
 - 2) Estimate and financial surety. As part of the decommissioning plan, the applicant shall also provide an estimate, prepared by a qualified engineer, setting forth the costs associated with decommissioning the BESS at issue. The Board issuing the Special Use Permit shall establish the amount of such surety to be established by the applicant prior to the issuance of the building permit, at 125% of the estimate. The surety may be in the form of escrowed funds, bonds or otherwise, but it is the intention of the surety to ensure that the Town has sufficient funds available to remove the installations and restore landscaping consistent with the plan in the event that the applicant fails to comply with its decommissioning obligations. The decommissioning plan shall provide a mechanism for re-evaluating the amount of the required surety every five years.
- L. If the owner or operator of the property or BESS changes the site plan approval shall remain in effect, provided that the successor assumes in writing all of the obligations of the site plan approval, decommissioning plan, and surety bond. A new owner or operator shall notify the Zoning Enforcement Officer in writing of such change within 30 days. All local permits and approvals will be void if a new owner or operator fails to provide such written notification. Reinstatement of voided local permits and

approvals will be subject to the same review and approval processes for new applications under this Local Law.

- M. Applicants shall provide an Emergency Management Plan as part of the application materials that must be approved by Fire Safety prior to final permitting by the Building Department and shall be a condition of site plan approval.
- N. Site access shall be maintained, unobstructed at all times, including snow removal to provide for local emergency service response.
- O. Community Benefit Agreement: The Planning Board may request that a community benefit agreement be provided to the Town if the applicant is seeking a payment in lieu of taxes (PILOT) agreement with the Town. As part of a site plan application the Applicant shall identify if they will be seeking a PILOT.

Section 2-4 “Specific Terms” Definitions

BATTERY ENERGY STORAGE SYSTEM: One or more stationary, rechargeable devices, assembled together, along with associated equipment, systems, or enclosures designed to store electrical energy received from the electric grid or on-site generation sources and to deliver such energy for use at a later time.

HAZARD MITIGATION ANALYSIS: An engineering evaluation report used to identify potential failure modes, assess their consequences and detail preventative measures for high-risk installations.