

Town of Tyre
Proposed Local Law No. _ of 2023
A Local Law to Amend the Town of Tyre Zoning Law
to Provide for Battery Energy Storage System Regulations

I. Authority

The Town Board of the Town of Tyre adopts this Local Law pursuant to:

- A. Article IX of the New York State Constitution, §2(c)(6) and (10);
- B. New York Statute of Local Governments, § 10 (1) and (7);
- C. New York Municipal Home Rule Law, §10(1)(i) and (ii) and § 10 (l)(a)(6), (11), (12), and 14;
- D. Sections 261-263 of the Town Law

II. Article I, Section 100-06 of the Town of Tyre Zoning Law (the “Zoning Law”), titled “Definitions,” is amended to add the following definitions:

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 battery energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the battery energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

BATTERY ENERGY STORAGE SYSTEM: A rechargeable energy storage system consisting of one or more devices, including batteries, battery chargers, controls, power conditioning systems and associated electrical equipment, assembled together, capable of storing energy in order to provide electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle.

BATTERY ENERGY STORAGE SYSTEM, BUILDING-MOUNTED: A battery energy storage system attached to or within any part of a building or structure that has an occupancy permit on file with the Town of Tyre and that is either the principal structure or an accessory structure on a recorded parcel.

BATTERY ENERGY STORAGE SYSTEM, GROUND-MOUNTED: A battery energy storage system that is not a building-mounted battery energy storage system.

- A. Tier 1 ground-mounted battery energy storage systems have an aggregate energy capacity less than or equal to 600 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.

- B. Tier 2 ground-mounted battery energy storage systems have an aggregate energy capacity greater than 600 kWh 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 and is classified as Group F-1 occupancy as defined in the International Building Code, and it 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 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 solar energy system or 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 or other consideration to the landowner from the solar energy system or battery energy storage system owner (or affiliate) regardless of whether any part of a solar energy system or battery energy storage system is constructed on the property.

UL: Underwriters Laboratory, an accredited standards developer in the US.

III. Article VIII of the Zoning Law is amended to add a new Section 100-77.2 entitled “Battery Energy Storage Systems” as follows:

- A. Statement of Purpose. These battery energy storage system regulations are adopted to advance and protect the public health, safety, and welfare of the 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
 - (4) To create synergy between battery energy storage system development and the Town’s regulations for Solar Energy Systems
- B. Applicability
 - (1) The requirements of this section shall apply to all battery energy storage systems permitted, installed, or modified in the Town after the effective date of this section, excluding general maintenance and repair.
 - (2) Battery energy storage systems constructed or installed prior to the effective date of this section shall not be required to meet the requirements of this section.
 - (3) 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.
- C. 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 Planning Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”)].
 - (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 Local Laws and Ordinances of the Town.
- D. Permitting Requirements for Building-Mounted Battery Energy Storage Systems. Building-mounted battery energy storage systems shall be permitted in all areas of the Town, subject to the Uniform Code and the “battery energy storage system Permit,” and exempt from site plan review.
- E. Permitting Requirements for Ground-Mounted Battery Energy Storage Systems. Tier 1 and Tier 2 ground-mounted battery energy storage systems are permitted in any Zoning District through the issuance of a special permit and approval of a site plan by the Planning Board pursuant to the special permit and site plan review requirements set forth in this section and Zoning Law Sections 100-20.C, 100-20.D, and 100-21 and the Site Plan Review requirements of Local Law No. 6 of 2022 as amended (the “Site Plan Review Law”).
- (1) The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA. Payment of said escrow and all application fees shall be made at the time of application submission.
 - (2) The applicant shall submit 7 copies of the application and site plan. In addition to the application requirements of Zoning Law Section 100-20.D and Articles 5 and 7 of the Site Plan Review Law, applications for the installation of ground-mounted battery energy storage system shall include the following:
 - (a) The appropriate Environmental Assessment Form pursuant to the NY State Environmental Quality Review Act (“SEQRA”).
 - (b) Blueprints or drawings of the battery energy storage system signed by a licensed Professional Engineer showing the proposed layout of the system.
 - (c) Property lines and physical features, including roads, for the project site.
 - (d) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
 - (e) A one- or 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.
 - (f) 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.

- (g) Verification that the battery energy storage system will be constructed and operated in compliance with all applicable Federal and State standards.
- (h) 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.
- (i) 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.
- (j) 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.
- (k) 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.
- (l) 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.
- (m) For Tier 2 ground-mounted battery energy storage systems, 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 Town Board.
- (n) Emergency Operations Plan. The emergency operations plan shall include the following information:
 - i. 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.
 - ii. Procedures for inspection and testing of associated alarms, interlocks, and controls.
 - iii. 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.
 - iv. 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.

- v. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
 - vi. 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.
 - vii. Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.
 - viii. 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.
- (o) 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:
- i. 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;
 - ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
 - iii. The anticipated life of the battery energy storage system;
 - iv. The estimated decommissioning costs and how said estimate was determined;
 - v. The method by which the decommissioning cost will be kept current;
 - vi. 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
 - vii. 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) Review Procedure. In addition to the requirements of the Articles 8 and 10 of the Site Plan Review Law and Zoning Law Section 100-20.D, the application for a Ground-Mounted Battery Energy Storage System shall be reviewed as follows:

- (a) The Town Zoning Enforcement Officer will review the application for completeness. An application shall be complete when it addresses all requirements presented in this Section including, but not necessarily limited to: (i) in consultation with the Seneca County Code Enforcement Officer, compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code; (ii) the application requirements of Section 100-77.2.E(2); (iii) the approval standards of Section 100-77.2.E(4); and (iv) the information necessary to an assessment of the potential for significant adverse impacts pursuant to SEQRA.
 - (b) Applicants shall be advised by the Town Zoning Enforcement Officer within 20 business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
 - (c) The application shall be subject to a public hearing pursuant to Section 100-21 to hear all comments for and against the application. Applicants shall have delivered the notice of public hearing by first class mail to adjoining landowners or landowners within 200 feet of the subject property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at the public hearing.
 - (d) Tier 2 ground-mounted battery energy storage systems shall be subject to a consultation with the Town Highway Superintendent or his designee to review which town roads shall be used to transport equipment and construction materials to the project site. The consultation shall review the type, weight and size of transport vehicles to be used, as well as the frequency and intensity of use during construction. The Highway Superintendent shall determine whether a commercial bond shall be required if he or she determines that such use will likely adversely impact said roads. Additionally, the Project Owner shall perform a pre-construction road survey to document the condition of the roads used and review post-construction road conditions with the Highway Superintendent.
 - (e) The application shall be referred to the Seneca County Planning Board pursuant to General Municipal Law § 239-m.
 - (f) The Town Planning Board shall have the authority to conditionally approve a special permit by imposing such reasonable conditions and restrictions as are directly related to and incidental to the battery energy storage system. Upon its approval of the battery energy storage system, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the Town.
- (4) Site Plan and Special Use Permit Approval Standards. In addition to the requirements of Article 8 of the Site Plan Review Law and Zoning Law Section 100-20.D, approval of the site plan and special use permit application requires that the Planning Board find that the proposed ground-mounted battery energy storage system protects adjacent land uses, assures that the proposed use is in harmony with local laws of the Town, will not adversely affect the neighborhood, and conforms to the following minimum requirements:

- (a) 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.
- (b) Signage. 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.
- (c) 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.
- (d) 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.
- (e) Vegetation and tree-cutting. Areas within 10 feet on each side of ground-mounted 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.
- (f) Setbacks. Ground-mounted battery energy storage systems and related structures are subject to the minimum yard and setback requirements for the applicable zoning district (e.g., AG, HDR, C-1, C-2, I, and MU Districts) in which the system is located. Ground-mounted battery energy storage systems shall be further set back an additional 120 feet from the minimum yard setback along all property lines that abut a lot or parcel of land located in the zoning district(s) permitting residential dwellings. This additional set back dimension shall also apply to the front yard portion of the lot or parcel of land located on the opposite side of the street which is also located in a zoning district allowing residential dwellings.
- (g) Height. Ground-mounted battery energy storage systems shall not exceed fifteen (15) feet in height.
- (h) Fencing Requirements. Tier 2 ground-mounted battery energy storage systems, including all mechanical equipment, shall be enclosed by a 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.
- (i) Screening and Visibility. Ground-mounted 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.

- (j) Security. Buildings must be protected from vehicle impact, including but not limited to protection provided by bollards.
- (k) 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 fifty (50) dBA during the day and forty-five (45) dBA during the night, as measured at the outside wall of any non-participating residence or occupied community building, existing or under construction at the time of the permit application. 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.
- (l) Decommissioning Security. Tier 2 ground-mounted battery energy storage systems shall provide for decommissioning security that meets the following requirements:
 - i. The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town attorney and/or engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and the approved Decommissioning Plan. The amount of the bond or security shall be 125% of the cost of implementing the approved Decommissioning Plan with an escalator of 2% annually for the life of the Tier 2 ground-mounted battery energy storage system. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the battery energy storage system.
 - ii. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the letter of credit or other security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The letter of credit or other security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
 - iii. In the event of default or abandonment of the battery energy storage system, the system shall be decommissioned as set forth in the approved decommissioning plan.
- (5) Ownership Changes. If the owner or operator of the ground-mounted 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 permit and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Town Zoning Enforcement Officer of such change in ownership or operator within 30 days of the ownership change.
- (6) Safety

- (a) System Certification. Battery energy storage systems and Equipment shall be certified under the applicable electrical, building, and fire prevention codes as required.
 - (b) 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 ground-mounted battery energy storage system is located in an ambulance district, the local ambulance corps.
 - (c) 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.
 - (d) 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.
- (7) Permit Time Frame and Abandonment
- (a) The Special Use Permit and site plan approval for a battery energy storage system shall be valid for a period of 24 months, provided that construction is commenced within that period of time. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Town Planning Board, within 24 months after approval, the Town Planning Board may extend the time to complete construction for up to an additional 6 months. If the owner and/or operator fails to perform substantial construction after 30 months, the approvals shall expire.
 - (b) 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 the approved decommissioning plan upon any abandonment, the Town may, at its discretion, enter the property and utilize the available decommissioning security for the removal of a Tier 2 ground-mounted battery energy storage system and restoration of the site in accordance with the approved decommissioning plan.

IV. The Zoning District Regulations of Article VI of the Zoning Law and the Bulk and Use Tables of Appendix A of the Zoning Law are amended as follows:

- A. Zoning Law Section 100-34.C is amended to add “Battery Energy Storage Systems” as a use permitted with a Special Use Permit in Agricultural Districts.
- B. Zoning Law Section 100-35.C is amended to add “Battery Energy Storage Systems” as a use permitted with a Special Use Permit in High Density Residential Districts.
- C. Zoning Law Section 100-36.C is amended to add “Battery Energy Storage Systems” as a use permitted with a Special Use Permit in Commercial District-West.

- D. Zoning Law Section 100-37.C is amended to add “Battery Energy Storage Systems” as a use permitted with a Special Use Permit in Commercial District-East.
- E. Zoning Law Section 100-38.C is amended to add “Battery Energy Storage Systems” as a use permitted with a Special Use Permit in Industrial Districts.
- F. Zoning Law Section 100-39.C is amended to add “Battery Energy Storage Systems” as a use permitted with a Special Use Permit in the Mixed-Use District.
- G. Zoning Law Bulk and Use Table 1 is amended to add a row as follows:

Zone District-Agricultural (AG)	Use Classes	Minimum Lot Size (Acres)	Minimum Lot Width (Feet)
(AG)-SP	Battery Energy Storage System	5	150

- H. Zoning Law Bulk and Use Table 2 is amended to add a row as follows:

Zone District: High Density Residential (HDR)	Use Classes	Minimum Lot Size (Acres) <i>With water and sewer</i>	Minimum Lot Size (Acres) <i>With water and sewer</i>	Minimum Lot Width (Feet)
(HDR)-SP	Battery Energy Storage System	5	5	150

- I. Zoning Law Bulk and Use Table 3 is amended to add a row as follows:

Zone District: Commercial District West (C-1)	Use Classes	Minimum Lot Size (Acres) <i>With water and sewer</i>	Minimum Lot Size (Acres) <i>With water and sewer</i>	Minimum Lot Width (Feet)
(C-1)-SP	Battery Energy Storage System	5	5	150

- J. Zoning Law Bulk and Use Table 4 is amended to add a row as follows:

Zone District: Commercial District East (C-2)	Use Classes	Minimum Lot Size (Acres) <i>With water and sewer</i>	Minimum Lot Size (Acres) <i>With water and sewer</i>	Minimum Lot Width (Feet)
(C-2)-SP	Battery Energy Storage System	5	5	150

- K. Zoning Law Bulk and Use Table 6 is amended to add a row as follows:

Zone District: Industrial (I)	Use Classes	Minimum Lot Size (Acres) <i>With water and sewer</i>	Minimum Lot Size (Acres) <i>With water and sewer</i>	Minimum Lot Width (Feet)
(I)-SP	Battery Energy Storage System	5	5	150

L. Zoning Law Bulk and Use Table 6 is amended to add a row as follows:

Zone District: Mixed-Use (MU)	Use Classes	Minimum Lot Size (Acres) <i>With water and sewer</i>	Minimum Lot Size (Acres) <i>With water and sewer</i>	Minimum Lot Width (Feet)
(MU)-SP	Battery Energy Storage System	5	5	150

V. 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.

This Local Law shall take effect upon filing in the office of the New York State Secretary of State.