

New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
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LOCAL LAW FILING

(Use this form to file a local law with the Secretary of State.)

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

Town of DUNKIRK

Local Law No. 3 of the year 2021.

A local law Entitled Battery Energy Storage Systems

Be it enacted by the Town Board of the Town of Dunkirk

Town of DUNKIRK

Section 1 – Authority

- A. Authority: This Battery Energy Storage Systems Local Law is adopted pursuant to sections 261-263 of the Town Law and section 20 of the Municipal Home Rule Law of the State of New York, which authorizes the Town of Dunkirk to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town law of New York State, "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor."
- B. Purpose: The Town of Dunkirk recognizes the importance of solar energy systems in generating electricity for on-premises and off-premises use, the reduction of greenhouse gas emissions, and support for the continuously growing market for solar energy systems. 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

4. To create synergy between battery energy storage system development and other stated goals of the community pursuant to its Comprehensive Plan.

Section 2 – Definitions

ANSI: American National Standards Institute

BATTERY(IES): A single cell or a group of cells connected 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, 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:

- A. Tier 1 Battery Energy Storage Systems (BESS) 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.
- B. 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. Tier 2 BESS are further categorized as follows:
 1. Tier 2-Commercial BESS: Facilities that meet or exceed the capacity or technology standards noted in B above AND are solely dedicated to providing energy storage for the property on which it is located; sale of excess energy to the local utility may be allowed as a secondary use.
 2. Tier 2-Utility BESS: Facilities that meet or exceed the capacity or technology standards noted in B above AND whose purpose is solely for energy storage for the local utility grid/network.

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:

- A. The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
- B. No other occupancy types are permitted in the building.
- C. 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:

1. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
2. 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.

Section 3 – Applicability

- A. The requirements of this Local Law shall apply to all battery energy storage systems permitted, installed, or modified in the Town of Dunkirk 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 Local Law.

Section 4 - General Requirements

- A. A building permit and an electrical permit shall be required for installation of all battery energy storage systems.
- B. Issuance of permits and approvals by the Town Board shall include review pursuant to the State Environmental Quality Review Act, Environmental Conservation Law (ECL) Article 8 and its implementing regulations at 6 NYCRR Part 617 (SEQRA).
- 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) 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.
- D. Fire Protection
 - a. The Applicant shall consult with the fire department, and jointly agree on any necessary training related to potential fire issues that are site specific. The Applicant and fire department shall also agree to the frequency of that training, which shall be provided by the Applicant, at no cost to the fire department or Town.
 - b. If the Applicant and fire department agree that specialized equipment is needed by the fire department, the Applicant will pay for the costs of such equipment or reimburse the fire department or Town for the purchase of same.
 - c. Funds for specialized equipment (at fair market value or equivalent) and training may also be placed into a dedicated escrow account for use by the Town for training and suppression equipment if multiple BESS' are commissioned in the Town requiring similar training/equipment needs to adequately distribute costs, at the discretion of the Town Board.

Section 5 - Permitting Requirements 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.

Section 6 - Permitting Requirements for Tier 2 Battery Energy Storage Systems

- A. Tier 2-Commercial Battery Energy Storage Systems (BESS) are permitted in all zoning districts, subject to the Uniform Code, the permitting requirements set forth in this

Section, and the site plan application requirements in Section 6.K. A Tier 2-Commercial BESS' shall not be subject to Section 6.I (Decommissioning).

B. Tier 2-Utility Battery Energy Storage Systems are permitted through the issuance of a special use permit within the M1 and M-2 Zoning Districts and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section.

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

1. Reviewed by the Zoning Officer for completeness. An application shall be complete when it addresses all matters listed in this Local Law including, but not necessarily limited to:
 - i. Compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code
 - ii. Details related to 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, as applicable. Applicants shall be advised within 10 business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
2. Subject to a public hearing to hear all comments for and against the application. The Town Board of the Town 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 200 feet of the property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Town Board at the public hearing.
3. Referred to the County Planning Department pursuant to General Municipal Law § 239-m if required.
4. 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 Applicant.

D. 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, except for 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.

E. Signage.

1. 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 local emergency contact information, including reach-back phone number.

2. 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.
- F. 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.
- G. Vegetation and tree cutting. Areas within a minimum of 10 feet on each side (including the front and rear) of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Removal of trees should be minimized to the extent possible. Landscaping and vegetative screening shall be located outside of the 10-foot buffer area and preferably outside of any fencing as noted in subsection 6.K.9 below.
- H. 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 60 dBA or more than 5 dBA above ambient noise levels, whichever is greater, as measured at the outside wall of any non-participating residence or occupied community building. Applicants shall submit equipment and component manufacturers' noise ratings, and, if requested, shall also provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the property including, but not limited to, public areas, non-participating residence(s), community building(s), or similar areas.
- I. Decommissioning.
1. 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. If the battery storage facility is developed in conjunction with a utility-scale solar facility, the decommissioning plan may be included within the solar facility documentation but a separate plan and security for each shall be established. 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, including any recycling of the batteries
 - iii. The anticipated life of the battery energy storage system;
 - iv. The estimated decommissioning costs and how said estimate was determined;
 - v. The method of ensuring that funds will be available for decommissioning and restoration;
 - vi. The method by which the decommissioning cost will be kept current;
 - vii. 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

- viii. 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.
2. Decommissioning Fund. The owner and/or operator of the energy storage system, shall continuously maintain a fund or bond payable to the Town of Dunkirk for the viable life of the facility for the removal of the battery energy storage system in an amount equal to 125% of the estimated cost to restore the property as presented in the approved decommissioning plan. Cost estimates for decommissioning shall include 2% annual inflation and be revised every three years during the operation of the system, with updated documentation provided to the Town Board. This security may consist of a letter of credit or bond from a State of New York licensed-financial institution. Security shall cover the full decommissioning costs without recoverable costs from salvage value; applicant to include anticipated salvage value for any materials, but this shall not be factored into the decommissioning costs. Any remaining security available after full removal and restoration of the site, to the satisfaction of the Town, will be returned to the applicant or any subsequent owner. All costs of the financial security shall be borne by the applicant.
- J. Fees. The Town Board of the Town of Dunkirk is hereby authorized to adopt a fee schedule for application and permit fees for Tier 2 Battery Storage Systems. Such fee schedule by resolution to be adopted by Town Board resolution, with authority to amend the fee schedule from time to time by Town Board resolution.
- K. Site plan application. For a Tier 2 Battery Energy Storage System requiring a Special Use Permit, site plan approval shall be required. In addition to the general requirements for a site plan application and review in Article XII of the Zoning Code, any site plan application shall include the following additional information:
 1. 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.
 2. 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.
 3. 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.
 4. 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.
 5. Zoning district designation for the parcel(s) of land comprising the project site.
 6. Setbacks. Tier 2 Battery Energy Storage Systems shall comply with the setback requirements set forth in Revised Solar Regulations, Section 5.C.

7. Height. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations for principal structures of the underlying zoning district.
8. Fencing Requirements. Tier 2 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.
9. Screening and Visibility. Tier 2 Battery Energy Storage Systems shall have views minimized from adjacent properties utilizing methods that are acceptable to the Town capable of screening the site in addition to any security fencing along any property line that abuts an existing roadway or residence. Requirements for screening and visibility shall refer to Section 6.C.e. For other adjacent uses, the level of screening required shall be determined by the Town Board. Said screening shall not interfere with ventilation or exhaust ports.
10. Noise. Applicants shall submit equipment and component manufacturers' noise ratings, and, if requested, shall also provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the property.
11. 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.

L. Special Use Permit Standards.

1. 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 Zoning Officer prior to final inspection and approval and maintained at an approved on-site location.
2. 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.
3. 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. The property operating and maintenance plan shall be updated annually.
4. 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:
 - 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 of Dunkirk 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.
5. Prior to the issuance of the building permit, or recommendation by the Planning Board if needed, and 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.
- M. 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 Zoning 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 Zoning 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 Zoning 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.

Section 7 – Safety

- A. 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:
 - 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 (Inverters and Power Converters),
 - 4. Certified under the applicable electrical, building, and fire prevention codes as required.
 - 5. 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.
- 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 in accordance with the Operation and Maintenance Manual noted herein, 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.
- 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. BESS owner/operator shall provide monitoring/functionality updates to the Town at regular intervals, annually at a minimum.

Section 8 - Permit Time Frame and Abandonment

- A. The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of 12 months, provided that a building permit is issued for construction. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as recommended by the Planning Board if needed, and approved by the Town Board, within 12 months after approval, the applicant or the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.
- B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for 12 months. 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.

Section 9 – Violations & Enforcement

Any violation of this Solar Energy 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 10 - 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.

Section 11 – Effective Date

This Local Law shall become effective upon filing with the Secretary of State.

1. I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2021 of the Town of Dunkirk was duly passed by the Town Board of the Town of Dunkirk on December 21, 2021 in accordance with the applicable provisions of law.

(Seal)


Clerk of the Town of Dunkirk

Date: December 21, 2021