

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 underlining to indicate new matter.

County City Town Village
(Select one.)

of East Fishkill

Local Law No. 2 of the year 2024

A local law "A Local Law Adding Provisions to the Town Code with Respect to Battery Energy
(Insert Title)
Storage Systems"

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

County City Town Village
(Select one.)

of East Fishkill as follows:

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

(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 Town of East Fishkill was duly passed by the Town Board on March 28 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 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 _____ above.

Robert Teresi

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

Date: April 5, 2024

(Seal)



Local Law No. 2 of 2024

(A LOCAL LAW ADDING PROVISIONS TO THE TOWN CODE WITH RESPECT TO BATTERY ENERGY STORAGE SYSTEMS)

Section 1. Legislative Intent

Throughout the region, there has been an increase in the number of battery energy storage operators submitting proposals to municipalities. Due to safety concerns, most areas of the Town are inappropriate for battery energy storage systems. The Town Board seeks to codify requirements to ensure the safety and health of the residents of East Fishkill.

Section 2. Additions to the Town Code

The following provisions shall be added to the Town Code in relation to Battery Energy Storage Systems:

1. Statement of Purpose

This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the of East Fishkill by creating regulations for the installation and use of battery energy storage systems, with the following objectives:

- A. To provide a regulatory scheme for the designation of properties suitable for the location, construction, and operation of battery energy storage systems;
- B. To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems; and
- C. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife, and other protected resources

2. Definitions

As used in this Chapter, the following terms shall have the meanings indicated:

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 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 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 or an electric motor vehicle.

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 H occupancy as defined in the International Building Code, and 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 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.

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 East Fishkill 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.

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 Planning Board shall include review pursuant to the State Environmental Quality Review Act.

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.

5. Permitting Requirements for Battery Energy Storage Systems

Battery Energy Storage Systems are permitted through the issuance of a Special Permit by the Town Board and Site Plan Review issued by the Planning Board within the I-1 District, I-2 District, I-3 District, and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section.

6. Permitting Requirements for Battery Energy Storage Systems

Battery Energy Storage Systems are permitted through the issuance of a special permit from the Town Board and within the I-1 District, I-2 District, I-3 District, and zoning districts, and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section.

A. Applications for the installation Battery Energy Storage System shall be:

- 1) reviewed by the Engineering, Planning, and Building Departments 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 and (ii) 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.

2) subject to a public hearing to hear all comments for and against the application as required by Chapter 194 of the Town Code. The Town Board is not required to have a Public Hearing if it believes that the Planning Board Public Hearing was sufficient.

3) referred to the Dutchess County Planning Department pursuant to General Municipal Law § 239-m if required.

B. 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.

C. 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 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.

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. The site 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. Noise. The 1-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level as described in the noise ordinance of the Town Code as measured at the outside wall of any non-participating residence or occupied community building. 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.

G. 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. The decommissioning plan shall include:

a. 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;

- b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
- c. The anticipated life of the battery energy storage system;
- d. The estimated decommissioning costs and how said estimate was determined;
- e. The method of ensuring that funds will be available for decommissioning and restoration;
- f. The method by which the decommissioning cost will be kept current;
- g. 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
- h. 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) Security.

a. The deposit, execution, or filing with the Town Clerk of a cash, bond, or other form of security reasonably acceptable to the Town Attorney and/or the Town 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 to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 200% of the cost of removal of the Battery Energy Storage System and restoration of the property with an escalator of 2% annually for the life of the Battery Energy Storage System.

b. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

c. In the event of default or abandonment of the solar energy system, the system shall be decommissioned as set forth herein.

H. Site plan application. For a Battery Energy Storage System, site plan approval shall be required. Any site plan application shall include the following information plus all other Site Plan requirements found throughout the Town Code:

- 1) Property lines and physical features, including roads, for the project site.
- 2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- 3) An 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.
- 4) 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.

5) 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.

6) 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.

7) Zoning district designation for the parcel(s) of land comprising the project site.

8) 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 the Town Engineer prior to final inspection and approval and maintained at an approved on-site location.

9) 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. The Applicant must satisfy all comments from the Fire Advisory Board. The Applicant shall be solely responsible for purchasing any new equipment required to ensure the safety of the community.

10) 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.

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 Planning Board.

12) Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.

13) 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:

a. 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.

b. Procedures for inspection and testing of associated alarms, interlocks, and controls.

c. 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.

d. 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.

e. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.

f. 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.

g. Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.

h. 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.

I. Special Use Permit Standards.

1) Setbacks. The principal structure of the Battery Energy Storage Systems shall be located at least 1,500 feet away from the nearest structure and 5,000 feet away from the nearest residential structure.

2) Height. Battery Energy Storage Systems shall comply with the building height limitations for principal structures of the underlying zoning district.

3) Fencing Requirements. Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by an 8-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.

4) Screening and Visibility. 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. 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 Building Department of such change in ownership or operator within thirty (30) days of the ownership change. A new owner or operator must provide such notification to the Building Department 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 Building Department 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.

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, including snow removal at a level acceptable to the local fire department and 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.

8. 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 a building permit is issued for construction during this 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 Planning Board, within 24 months after approval, the Town may extend the time to complete construction. If the owner and/or operator fails to perform substantial construction after 36 months, the approvals shall expire.

B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than twelve (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 Battery Energy Storage System and restoration of the site in accordance with the decommissioning plan.

9. Enforcement

Any violation of this Battery Energy Storage System 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 the Town Code.

10. Public Benefit Contribution

Each applicant for a Battery Energy Storage System shall be required to enter into a public benefit contribution agreement to benefit police, fire, basic life support, and advanced life support services

in the Town of East Fishkill. Sufficiency of the contribution and duration of the agreement shall be determined by the Town Board.

Section 3. Severability

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, 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. Effective date

This local law shall take effect immediately upon filing with the Secretary of State.

**BY ORDER OF THE TOWN BOARD
OF THE TOWN OF EAST FISHKILL
PETER CASSIDY, TOWN CLERK**


**Adopted March 28, 2024
At a Regular Meeting
Held at Town Hall**

VOTE	VOTING
COUNCILPERSON FRANCO	AYE
COUNCILPERSON MARINARO	AYE
COUNCILPERSON ARCO	AYE
COUNCILPERSON FLORES	AYE
SUPERVISOR D'ALESSANDRO	AYE

I, Peter J. Cassidy, the duly qualified and acting Clerk for the Town of East Fishkill, Dutchess County, State of New York, do hereby certify that attached herein is a true and correct copy of a Local Law Adding Provisions to the Town Code with Respect to Battery Energy Storage Systems adopted at the Town Board meeting on March 28, 2024.

In witness whereof, I have hereunto set my hand and affixed the seal of the Issuer this 3rd day of April, 2024.




Peter J. Cassidy
East Fishkill Town Clerk