

LOCAL LAW NO. 8-2025

A LOCAL LAW AMENDING CHAPTER 218-20.7 OF THE TOWN CODE

WHEREAS, the Town Board recently adopted (September 9, 2025) a local law, specifically, Town Code § 218-20.7 Battery Energy Storage Systems, prohibiting Battery Energy Storage Systems (hereinafter “BESS facilities”) in the Town on Mount Pleasant.

WHEREAS, the September 9, 2025 local law amending the Town Code was adopted pursuant to Article IX of the New York State Constitution, §2(c)(6) and (10), New York Statute of Local Governments § 10 (1) and (7), Town Law §§ 261-263, and Municipal Home Rule Law of the State of New York § 10, which authorize the Town of Mount Pleasant to adopt zoning provisions that advance and protect the health, safety and welfare of the community; and

WHEREAS, the Town recognizes that New York State has sought to promote renewable energy generation and storage, but such policies do not warrant the establishment of BESS facilities in every municipality where local safety, environmental and land use concerns are of the utmost importance; and

WHEREAS, the Town finds that BESS facilities function primarily as commercial energy storage operations and do not constitute public utilities and therefore, the local law adopted on September 9, 2025, is proposed to be amended to legislatively determine that BESS facilities are not public utilities; and

WHEREAS, the Town has already determined that BESS facilities also pose disproportionate risks to the public health, safety and welfare, such that no new BESS facilities shall be permitted in the Town; and

WHEREAS, in July 2025, the United States Environmental Protection Agency (“US EPA”) recognized the very real dangers presented by BESS facilities and issued a 3 page “Safety Guidance” brochure for the potential siting of BESS facilities; and

WHEREAS, US EPA Administrator Zeldin stated, referencing a proposed BESS facility in Long Island, which presents issues that are equally applicable to the Town of Mount Pleasant:

“Locals have raised serious concerns about the potential for toxic emissions from the site and contamination of the Nissequogue River watershed, as well as its close proximity to residences, schools and playgrounds.... The area’s volunteer fire departments lack the specialized training and resources needed to respond to lithium battery fires, which can burn for weeks and release hydrogen fluoride and other dangerous chemicals ... These aren’t hypothetical risks.”

WHEREAS, the Town Board has concerns that a fire at a BESS facility could release harmful toxins into the air, affecting air quality at neighboring properties, the Saw Mill River, wetlands, schools, and hospitals within the Town, including the Westchester Medical Center; and

WHEREAS, the Westchester Medical Center is located in the Town which poses serious risk to life and safety should there be any need to evacuate the hospital; and

WHEREAS, the Town Board has studied the regulations of numerous municipalities and their regulation of BESS facilities, including, but not limited to, the Town of Yorktown, the Town of Carmel, the Town of Duanesburg, the Town of Montgomery, the Town of Ossining, as well as the Town of Southampton; and

WHEREAS, the Town Board seeks to mitigate the impacts of BESS facilities on the Town’s natural resources, including floodplains, wetlands, and the Saw Mill River watershed; and

WHEREAS, this Local Law is a land use regulation intended to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern; and

WHEREAS, the Town will not consider BESS facilities public utilities subject to a public necessity use variance; and

WHEREAS, the Town Board seeks to amend the existing law that bans BESS facilities within the Town and legislatively determine that the Town will not consider proposed BESS facilities public utilities subject to a public necessity use variance.

NOW, THEREFORE BE IT RESOLVED, that the Town Board of the Town of Mount Pleasant hereby amends Town Code Chapter §218.20.7 Battery Energy Storage Systems as follows with ~~struck through~~ language being removed and underlined language being added:

CHAPTER 218. Zoning

Article II Supplemental Regulations

§ 218-20.7 Battery Energy Storage Systems.

A. Purpose.

This Battery Energy Storage System Law is adopted to advance and protect the public health safety, welfare and quality of life in the Town of Mount Pleasant by prohibiting battery energy storage systems from being sited in the Town of Mount Pleasant due to their significant safety and environmental risks and to protect the Town’s residents, businesses and natural resources – including, but not limited to, flood plains, wetlands and the Saw Mill River watershed.

This law also seeks to ensure that existing Battery Energy Storage System facilities are properly maintained and “decommissioned” after their useful life.

B. 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 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.

DECOMMISSIONING: A systematic process that provides for the removal/proper disposal and reclamation of a Battery Energy Storage System, and its site, at the end of its useful life and/or as the result of damage by fire or other event.

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.

NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL): A United States 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 Occupational Safety and Health Administration (“OSHA”) electrical standards.

NEC: National Electric Code.

NFPA: National Fire Protection Association.

PUBLIC UTILITY FACILITY: A facility, other than a personal wireless service facility or a battery energy storage system, for the provision of public utility services, including facilities constructed, altered or maintained by utility corporations, either public or privately owned, or government agencies, necessary for the provision of electricity, gas, steam, heat, communication, water, sewage collection or other such service to the general public. Such facilities shall include poles, wires, mains, drains, sewers, pipes, conduits, cables, alarms and call boxes and other similar equipment, but shall not include office or administration buildings. Battery energy storage systems (BESS), defined separately in this chapter, shall not be deemed to be public utilities under this Code.

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.

C. Regulation of Battery Energy Storage Systems

1. Battery Energy Storage Systems shall be prohibited from being sited in the Town of Mount Pleasant.
2. Existing Battery Energy Storage Systems shall be considered permitted, nonconforming uses. Such existing Battery Energy Storage System shall not be expanded, modified or retrofitted in any manner, including but not limited to, in a manner that increases their energy capacity.
3. Because Battery Energy Storage System facilities are not “public utilities” in considering any use applications the Town will not apply the public necessity use variance test.

D. Emergency Regulations/Site Access – Existing Systems/Non-Conforming Use.

All previously existing Battery Energy Storage Systems shall be maintained in good working order and in accordance with industry standards listed by a Nationally Recognized Testing Laboratory (NRTL) to UL 9540 standards. Site access for maintenance and in the event of an emergency, shall be maintained at all times, including snow removal at a location acceptable to the Building Inspector. The provisions of Town Code Chapter 218, Article V, Nonconforming Uses, Lots and Structures shall apply and any owner/operator of an existing Battery Energy Storage System shall comply with the following safety and compliance requirements which must be submitted to the Town Building Department within six (6) months of the passage of this law:

1. Fire Safety Compliance Plan: All existing, non-conforming, Battery Energy Storage Systems shall have a Fire Safety Compliance Plan that documents and verifies that the system, its associated controls and safety systems are in compliance with the Uniform Code. The Fire Safety Compliance Plan must be prepared to the satisfaction of the Town Building Inspector.
2. Emergency Operations Plan: All existing non-conforming, Battery Energy Storage Systems shall have an “Emergency Operations Plan” prepared to the satisfaction of the Town Building Inspector. Copies of the Emergency Operations Plan shall be maintained by the system owner, the local fire department, and Building Inspector. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire 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. Emergency contact information for the owner and operators, with twenty-four-hour contact information, which must be kept current;
- c. Procedures for inspection and testing of associated alarms, interlocks, and controls;
- d. Procedures to be followed in response to notifications from the Battery Energy Storage System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing notification to Fire Department personnel for potentially hazardous conditions in the event of a system failure;
- e. 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 or isolation of equipment, and controlling or extinguishing the fire;
- f. Response considerations similar to a safety data sheet (“SDS”) that will address response safety concerns and extinguishment when an SDS is not required;
- g. 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;
- h. Other procedures as determined necessary by the Building Department to provide for the safety of occupants, neighboring properties, and emergency responders; and
- i. 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.

E. Decommissioning.

1. All existing, nonconforming Battery Energy Storage Systems, within six (6) months of the passage of this law, are required to provide the Building Department with a decommissioning plan. The decommissioning plan shall include the following:

- a. A narrative description of the activities to be accomplished, including who will perform each activity and at what point in time, for complete physical removal of all Battery Energy Storage System components, structures, equipment, security barriers, transmission lines, access roads and other related improvements from the site;
 - b. A detailed narrative and plan for the 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, prepared by a licensed professional engineer, 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. A narrative description of the manner in which the site will be restored, including how any changes to the surrounding areas and other systems adjacent to the Battery Energy Storage System, including, 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 Battery Energy Storage System from service, and for removing a Battery Energy Storage System from service that has been damaged by a fire or other event.
2. The owner and/or operator of the Battery Energy Storage System shall implement the decommissioning plan upon abandonment and/or in conjunction with removal from the facility.

F. Enforcement

1. Enforcement Officer. The provisions of this chapter shall be enforced by the Town Building Inspector.
2. A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$1,000 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of

which were committed within a period of five years, punishable by a fine not exceeding \$1,500 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not exceeding \$2,000 or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors, and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each day's continued violation shall constitute a separate and distinct violation.

BE IT FURTHER RESOLVED, 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 modified 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.

BE IT FURTHER RESOLVED, that the Town Board hereby directs the Town Clerk to file said amended Local Law in the Office of the Secretary of State; and

BE IT FURTHER RESOLVED, that this resolution shall be effective immediately.

Motion By: Councilman Sialiano

Seconded by: Councilwoman Smalley

Vote:

Supervisor Carl Fulgenzi	<u>Y</u>	N	A	Absent
Councilwoman Laurie Rogers Smalley	<u>Y</u>	N	A	Absent
Councilman Mark Saracino	Y	N	A	<u>Absent</u>
Councilman Thomas Sialiano	<u>Y</u>	N	A	Absent
Councilwoman Danielle Zaino	<u>Y</u>	N	A	Absent

I hereby attest that the above Resolution was approved by the Town Board of the Town of Mount Pleasant at its September 25, 2025 Meeting and that I have been authorized to sign this Resolution by decision of the Town Board.


Emily Costanza, Town Clerk