

LOCAL LAW 2 OF 2021 ADDING
CHAPTER 176 TO THE SWEDEN TOWN CODE
CONCERNING BATTERY ENERGY STORAGE SYSTEMS

Be it enacted by the Sweden Town Board, County of Monroe, State of New York
(hereinafter referred to as the Board), as follows:

SECTION 1. TITLE (§176-1)

This Local Law shall be referred to as "Local Law #2 of 2021 Adding Chapter 176 to the Sweden Town Code Concerning Battery Energy Storage Systems".

SECTION 2. AUTHORIZATION (§176-2)

This Local Law is adopted pursuant to the New York State Constitution Article IX, Town Law §261-264 and Municipal Home Rule Law §10.

SECTION 3. PURPOSE AND INTENT (§176-3)

This Local Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Sweden (hereinafter referred to as Sweden) 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.
- C. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources.
- D. To create synergy between battery energy storage system development and other stated goals of Sweden pursuant to its Comprehensive Plan.

E. This zoning ordinance does not supersede any other state or federal regulation pertaining to electrical storage laws. Any conflict between this Local Law with State Law, Federal Law and/or related utility regulations shall be resolved by application of State Law, Federal Law or utility regulation.

SECTION 4. DEFINITIONS (§176-4)

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

A. ANSI: American National Standards Institute.

B. 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.

C. 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.

D. BATTERY ENERGY STORAGE SYSTEM: One or more devices assembled together and 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:

1) Tier 1 battery energy storage systems 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.

2) Tier 2 battery energy storage systems have an aggregate energy capacity greater than 600kWh or are comprised of one or more storage battery technology in a room or enclosed area.

E. CELL: The basic electrochemical unit, characterized by an anode and a cathode used to receive, store, and deliver electrical energy.

F. 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.

G. DECOMMISSIONING: A systematic process for the removal of the battery energy storage system from the property and the restoration of the property at abandonment or closure of the system including financial responsibility of its removal.

H. 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, all in compliance 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 systems and other energy systems.

4) Administrative and support personnel are permitted in areas within the buildings that do not contain a 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.

I. 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.

J. 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.

K. 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.

L. NEC: National Electric Code.

M. NFPA: National Fire Protection Association.

N. NON-DEDICATED-USE BUILDING: All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

O. NON-PARTICIPATING PROPERTY: Any property that is not a participating property.

P. NON-PARTICIPATING RESIDENCE: Any residence located on Non-participating Property.

Q. 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.

R. 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.

S. UL: Underwriters Laboratory, an accredited standards developer in the United States.

T. UNIFORM CODE: The New York State Uniform Fire Prevention and Building Code adopted pursuant to Executive Law Article 18 as currently in effect and as may be amended from time to time.

SECTION 5. APPLICABILITY (§176-5)

A. The requirements of this Local Law shall apply to all battery energy storage systems permitted, installed or modified in Sweden after the effective date of this Local Law.

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 of or replacements of an existing battery energy storage system that increase the total battery energy storage systems designed discharge duration or power rating shall be subject to this Local Law.

SECTION 6. BATTERY ENERGY STORAGE SYSTEMS-GENERAL REQUIREMENTS (§176-6)

A. A building permit shall be required for installation of all battery energy storage systems issued by the Sweden Building Department. An electrical inspection must be conducted by an approved electrical inspection agency for Sweden.

B. Issuance of approvals by the Sweden Planning Board for Tier 2 systems and shall include review pursuant to the State Environmental Quality Review Act including 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 contain or are otherwise associated with a battery energy storage system and subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of said codes as well as all applicable provisions of the Sweden Town Code.

SECTION 7. PERMITTING REQUIREMENTS FOR TIER 1 BATTERY ENERGY STORAGE SYSTEMS (§176-7)

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. Permits shall be issued by the Sweden Building Department.

SECTION 8. PERMITTING REQUIREMENTS FOR TIER 2 BATTERY ENERGY STORAGE SYSTEMS (§176-8)

A. Tier 2 battery energy storage systems are permitted in all zoning districts through the issuance of a special use permit, and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section.

B. Applications for the installation of Tier 2 battery energy Storage system shall be:

1) reviewed by the Sweden Planning Board for completeness. An application shall be complete when it addresses all matters listed in this Local Law including, but not limited to, compliance with the Uniform Code, the Energy Code, addressing matters relating to

floodplain, utility lines, electrical circuitry, signage, lighting, vegetation, tree-cutting, noise, decommissioning, site plan considerations, special use considerations, ownership changes, safety, emergency operation plan, easements, permit time frame and abandonment. Applicants shall be advised within 15 business days as to the status of the application.

2) subject to a public hearing to hear all comments for and against the application. The Sweden Planning Board shall have a notice printed in a newspaper of general circulation in Sweden at least 5 days in advance of such hearing. Applicants shall deliver the notice by first class mail to adjoining landowners or landowners within 500 feet of the property at least 10 days prior to such hearing. Proof of mailing shall be provided to the Sweden Planning Board at the public hearing.

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

4) upon closing of the public hearing, the Sweden Planning 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 Sweden Planning Board and the Applicant.

5) upon approval of the Sweden Planning Board any application for a building permit is to be made to the Sweden Building Department.

C. 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/or any new interconnection equipment including poles with new easements and right-of-way.

D. 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, the type of suppression system installed in the area of battery energy storage systems and 24-hour emergency contact information including a 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.

E. Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety purposes, operational purposes, said lighting to be reasonably shielded and downcast from abutting properties.

F. Vegetation and tree-cutting. Areas within 10 feet on each side of Tier 2 battery energy storage systems shall be cleared of combustible vegetation and 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 exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.

G. 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 as measured at the outside wall of any non-participating residence or occupied community building. Applicants may submit equipment and component manufacturer's 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.

H. Site plan application is to be made to the Sweden Planning Board. For a Tier 2 Battery Energy Storage System requiring a Special Use Permit, site plan approval shall be required. Any site plan application shall include the following information:

- 1) Property lines and physical features, including roads, for the project site.
- 2) Proposed changes to the landscape of the site, grading, vegetation clearing, planting, exterior lighting and screening vegetation or structures.
- 3) Name, address and contact information of the proposed or potential system installer and the owner and/or operator of the battery energy storage system. 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 property owners indicating their consent to the application for 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) 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 Sweden Planning Board.

I. Building plan (permit) application is to be made to the Sweden Building Department after Sweden Planning Board approval. For a Tier 2 battery energy storage system, building plan approval shall be required. Any building plan application shall include the following 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 a building permit.

3) Name, address and contact information of the proposed or potential system installer and the owner and/or operator of the battery energy storage system. 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 property owners indicating their consent to the application for use of the property for the battery energy storage system.

5) Commissioning Plan. Such plan shall satisfactorily verify that the system and its associated controls and safety systems are in proper working condition as set forth in the Uniform Code. Where commissioning is required by the Uniform Code, same 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 including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Sweden Planning Board and Sweden Building Department prior to final inspection and approval and thereafter maintained at an approved on-site location.

6) Fire Safety Compliance Plan. Such plan shall satisfactorily verify that the system, associated controls and safety systems are in compliance with the Uniform Code.

7) Operation and Maintenance Manual. The plan shall describe continuing battery energy storage system maintenance, property upkeep, design, construction, installation, testing and commissioning information, all in conformity with the Uniform Code.

8) Prior to the issuance of a 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.

9) Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department and the 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, all to also ensure 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 that identify potentially dangerous conditions, including shutting down equipment, summoning service 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/or controlling or 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 Sweden to provide for the safety of occupants, neighboring properties and emergency responders.

h. Procedures and schedules for conducting drills of all procedures and for training local first responders on the contents of the plan and appropriate response procedures.

10. An Operating Permit must be issued by the Building Department.

J. Special Use Permit Standards.

1) Setbacks. Tier 2 battery energy storage systems shall comply with the setback requirements of the underlying zoning district for solar farms as set forth in Sweden Town Code §174-8-D. In the event the battery energy storage system will be used for energy storage in conjunction with a solar farm, the battery energy storage system must be contained within the perimeter of the approved solar farm.

2) Height. Tier 2 battery energy storage systems shall comply with the building height limitations for principal structures of the underlying zoning district.

3) Fencing Requirements. Tier 2 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. Tier 2 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 so as not to interfere with ventilation or exhaust ports.

K. Ownership Changes. If any owner of a battery energy storage system changes, or if 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 Sweden Building Department 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 Sweden Building Department in writing. The special use permit and all other local approvals for the battery energy storage system will become void if a new owner or operator fails to provide written notification to the Sweden Building Department in the required time frame. 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 9. SAFETY REQUIREMENTS FOR TIER 2 BATTERY ENERGY STORAGE SYSTEMS (§176-9)

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) 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 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, 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.

SECTION 10. ABANDONMENT AND DECOMMISSIONING (§176-10)

A. Any battery energy storage system shall be considered abandoned after 6 months without electrical energy storage and must be removed from the property. Applications for

extensions subsequent to such an abandonment as described in the previous sentence can be reviewed by the Sweden Planning Board for a period of up to 6 months after such abandonment.

B. All applications for any battery energy storage system shall include and be accompanied by a decommissioning plan to be implemented upon abandonment and/or in conjunction with the removal of same and shall:

1) Include an affirmative obligation and acknowledgement that after any battery energy storage system can no longer be used it shall be removed by the applicant and/or any subsequent owner.

2) Demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction.

3) Include an expected timeline for execution and completion.

4) Include a detailed cost estimate detailing the projected expense of executing the decommissioning plan to be prepared and signed by a professional engineer or registered architect.

5) Obligate the owner, operator and/or successors in interest to remove any installations that have reached the end of their useful life or have been abandoned, physically remove the installation no more than 6 months after the date of discontinued operations and also notify Sweden by certified mail of the proposed date of discontinued operations and the plans for removal.

6) An obligation to physically remove all battery storage systems, structures, equipment, security barriers and transmission lines from the site.

7) Include an obligation to dispose of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations.

C. Absent notice of a proposed date of decommissioning and written notice of extenuating circumstances, any battery storage system shall be considered abandoned when it fails to operate (as set forth in 10.A. of this Section) for more than 6 months without the written consent of Sweden. If the owner or operator of any battery energy storage system fails to remove the installation in accordance with the requirements of this Section within 6 months of abandonment or the proposed date of decommissioning, Sweden may enter the property and physically remove the installation upon application to a Court of appropriate jurisdiction to obtain access to said property for that purpose.

D. In the event that an application is approved for a battery energy storage system, the Sweden Planning Board shall require that the applicant and/or property owner provide or establish a bond, surety bond, financial deposit, undertaking, financial escrow and/or other financial security, the amount, substance and character of which is to be determined by and at the sole discretion and approval of the Sweden Planning Board and/or the Sweden Town Board, the spirit and intent of same being to ensure that sufficient funds are available to remove the installation and restore landscaping consistent with the best interests of the landowner and/or Sweden in the event the applicant fails to comply with its decommissioning obligations with same to be annually reviewed for financial sufficiency (with any decision relating to continued financial sufficiency also to be in the sole discretion and approval of the Sweden Planning Board and/or the Sweden Town Board). As a part of the foregoing review process, an owner or operator shall provide financial documentation, financial statements or any other information requested by the Sweden Planning Board and/or the Sweden Town Board on an annual basis. Sweden reserves the right to request reasonable access to the property upon notice and consent.

SECTION 11. PERMIT TIME FRAME (§176-11)

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 and/or construction is commenced. 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 Sweden Planning Board, within 24 months after approval, Sweden may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 36 months, the approvals shall expire.

SECTION 12. ENFORCEMENT (§176-12)

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 Sweden Zoning or Land Use Regulations.

SECTION 13. SEVERABILITY (§176-13)

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 14. EFFECTIVE DATE (§176-14)

This Local Law shall take effect upon the date it is filed in the Office of the New York State Secretary of State in accordance with the Municipal Home Rule Law §27.

Dated: Brockport, New York
April 13, 2021