

Town of Canton
Local Law No. ____ of the year 2023

Anaerobic Digester Local Law

1. Authority

This article shall be known as the "Town of Canton Anaerobic Digester Local Law."

This Anaerobic Digester Local Law is 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); sections 261-263 of the Town Law and section 10 of the Municipal Home Rule Law] of the State of New York, which authorize the Town of Canton to adopt zoning provisions that advance and protect the health, safety and welfare of the community.

2. Statement of Purpose

This Anaerobic Digester Local Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Canton by creating regulations for the installation and use of Anaerobic Digester systems, with the following objectives:

- A. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of Anaerobic Digesters;
- B. To ensure compatible land uses in the vicinity of the areas affected by anaerobic digesters;
- C. To mitigate the impacts of anaerobic digesters on environmental resources such as important agricultural lands, forests, wildlife and other protected resources; and
- D. To create synergy between anaerobic digester development and the comprehensive plan.

3. Definitions

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

ANAEROBIC DIGESTER

A facility the main purpose of which is to use anaerobic digestion to convert livestock and poultry manure (primary catalyst) and feedstock into biogas. Anaerobic digesters

may include codigestion in which the livestock and poultry manure may be mixed with other organic materials (secondary catalysts).

ANAEROBIC DIGESTION

A series of processes in which microorganisms break down biodegradable material in the absence of oxygen, used for industrial or domestic purposes to manage waste and release energy.

APPLICANT

The person or entity filing application under this article.

BIOGAS

A fuel consisting of methane, carbon dioxide and small amounts of water and other compounds produced as a result of anaerobic digestion.

CODIGESTION

Anaerobic digestion of multiple biodegradable materials.

FEEDSTOCK

Any material which may be converted to methane gas by the process of anaerobic digestion. Nothing contained in this definition shall be construed to permit the use of any material generated off site in small anaerobic digesters as defined and regulated herein.

LARGE ANAEROBIC DIGESTER

An anaerobic digester which accepts animal waste, feedstock, and/or other organic waste generated off site or from more than one farm. This includes any digester system that produces RNG for injection into a natural gas distribution system. It is noted that any system with a nameplate generating capacity of 25 megawatts or more is subject to the requirements, terms and conditions of New York State's Public Service and Executive Law.

SMALL ANAEROBIC DIGESTER

An anaerobic digester primarily intended to reduce on-site consumption of utility power. A system is considered a small anaerobic digester only if it supplies energy power for on-site use, except that when a property upon which the facility is installed also receives

electrical power from a utility company, excess electrical power not presently needed for on-site use may be used by the utility company. Small anaerobic digesters use livestock and poultry manure and other feedstock generated on site by one farm and are designed and intended solely to generate power to offset utility costs. Small anaerobic digesters may include codigestion.

ANSI: American National Standards Institute

COMMISSIONING: A systematic process that provides documented confirmation that a Anaerobic Digester 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 Anaerobic Digester equipment, and complies with the following:

- A. The building's only use is digestion, 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 Anaerobic Digester Local 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:
 - i. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
 - ii. 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 an Anaerobic Digester 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.

PARTICIPATING PROPERTY: An Anaerobic Digester 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 Anaerobic Digester owner (or affiliate) regardless of whether any part of a Anaerobic Digester is constructed on the property.

Renewable Natural Gas (RNG): Bio-gas that has been upgraded to pipeline quality gas for use in natural gas systems.

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

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.

4. Applicability

- A. The requirements of this Local Law shall apply to all Anaerobic Digesters permitted, installed, or modified in the Town of Canton after the effective date of this Local Law, subject to any variances granted by the Zoning Board of Appeals as determined pursuant to the Town Law of the State of New York.
- B. Anaerobic Digesters 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 Anaerobic Digester that increase the total discharge, production, duration, and/or power rating shall be subject to this Local Law.

5. Small anaerobic digesters.

Small anaerobic digester systems are permitted as an accessory use to farming operations in any zone where agricultural uses are permitted subject to the definition of "small anaerobic digester" as set forth above and also to the following:

- A. Setbacks and lot requirements.
 - 1) Small anaerobic digesters are permitted only on lots of 10 acres or more.
 - 2) Small anaerobic digesters shall not be located within 100 feet of any side property line, 100 feet of any rear property line, 400 feet from any residential structure other than that of the property owner and 100 feet from any public road right-of-way. For purposes of this subsection, the term "property owner" shall include any person or persons who own such residential structure and who also have an ownership interest in any corporation, limited liability company, partnership or other entity which owns the farm property and/or operation. There shall be no discharge of any kind on any such road right-of-way.
- B. Small anaerobic digester and building permit. The installation of a small anaerobic digester shall require a small anaerobic digester and building permit from the Code Enforcement Officer.
- C. Design and installation. The permit applicant shall address and document performance standards for siting to minimize impacts on neighboring properties which shall include considerations of:
 - 1) Prevailing wind patterns.
 - 2) Proximity to residential and other nonagricultural properties regardless of how they are zoned.
 - 3) Operational noise.
 - 4) Specific hours of operation with regard to truck traffic.

- D. The application shall be accompanied by documentation from an engineer or other person qualified to design and install the proposed system, explaining all details of construction, operation, maintenance and necessary controls related to the system. The determination of qualified, as used in this paragraph, shall be at the discretion of the Code Enforcement Officer.
- E. Anaerobic digester systems shall be designed and constructed in compliance with the regulations and guidelines of the New York State Department of Environmental Conservation and any amendments, revisions, supplements, and successors thereto.
- F. Anaerobic digester systems shall be designed and constructed in compliance with all applicable local, state, and federal laws, codes and regulations, in addition to the manufacturer's instructions and industry standards. Evidence of such compliance and of all federal and state agencies' required approvals shall be included with the application.
- G. Building Permit. No anaerobic digester system shall be installed until a Building Permit has been issued by the Code Enforcement Officer.
- H. Decommissioning. If a small anaerobic digester ceases to perform its originally intended function for more than twelve (12) consecutive months, the developer, operator, and/or property owner shall remove the digester and associated equipment by no later than ninety (90) days after the end of the twelve-month period. In the event that the property owner fails to remove the aforesaid non-functioning digester within the time prescribed herein, the Town may enter upon the land where such digester has been installed and remove same. All expenses incurred by the Town in connection with the removal of the non-functioning digester shall be assessed against the land on which such digester(s) is located and shall be levied and collected in the same manner as provided in Article 15 of the N.Y. Town Law for the levy and collection of a special ad valorem levy.

6. Large anaerobic digesters.

Large anaerobic digester systems are permitted through the issuance of a special use permit as an accessory use to farming operations in any zone where agricultural uses are permitted subject to the definition of "large anaerobic digester" as set forth above and also to the following:

- A. Setbacks and lot requirements.

- 1) Large anaerobic digesters are permitted only on lots of 30 acres or more.
 - 2) Large anaerobic digesters shall not be located within 250 feet of any side property line, 250 feet of any rear property line, 500 feet from any residential structure other than that of the property owner and 250 feet from any public road right-of-way. For purposes of this subsection, the term "property owner" shall include any person or persons who own such residential structure and who also have an ownership interest in any corporation, limited liability company, partnership or other entity which owns the farm property and/or operation. There shall be no discharge of any kind on any such road right-of-way.
- B. Large anaerobic digester, site plan approval, and building permit. The installation of a large anaerobic digester shall require site plan approval from the Planning Board, and a building permit from the Code Enforcement Officer.
- C. Design and installation. The permit applicant shall address and document performance standards for siting to minimize impacts on neighboring properties which shall include considerations of:
- 1) Prevailing wind patterns.
 - 2) Proximity to residential and other nonagricultural properties regardless of how they are zoned.
 - 3) Operational noise.
 - 4) Specific hours of operation with regard to truck traffic.
- D. The application shall be accompanied by documentation from an engineer or other person qualified to design and install the proposed system, explaining all details of construction, operation, maintenance and necessary controls related to the system. The determination of qualified, as used in this paragraph, shall be at the discretion of the Code Enforcement Officer.
- E. Large Anaerobic Digester systems shall be designed and constructed in compliance with the regulations and guidelines of the New York State Department of Environmental Conservation, the U.S. Environmental

Protection Agency, and any amendments, revisions, supplements, and successors thereto.

F. Anaerobic digester systems shall be designed and constructed in compliance with all applicable local, state, and federal laws, codes and regulations, in addition to the manufacturer's instructions and industry standards. Evidence of such compliance and of all federal and state agencies' required approvals shall be included with the application.

G. General Requirements

- 1) A building permit shall be required for installation of all anaerobic digesters.
- 2) Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].
- 3) All Anaerobic Digesters and all other buildings, piping, and/or structures that contain or are otherwise associated with an Anaerobic Digester 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 of Canton Code.

H. Safety. The owner/operator shall provide evidence that a copy of the site plan application has been submitted to the Fire Chief of the Canton Fire Department. All means of shutting down the digester shall be clearly marked on the site plan and building permit applications.

Upon project completion and annually for the life of the project, the applicant shall schedule and coordinate emergency response training with facility personnel, fire code officials, emergency responders and the St. Lawrence County Emergency Management Office to tour the Anaerobic Digester Local and review implementation of the procedures outlined in the facility's emergency response plan.

Emergency Response Equipment. In the event it is not available, the applicant shall be responsible for purchasing equipment and materials needed for emergency responders to implement procedures outlined in the facility's emergency response

plan. Items may include, but are not limited to: air monitors, ventilators and fans, and fire suppression.

I. Application Procedures. Applications for the installation of a Large Anaerobic Digester shall be subject to the site plan approval process in the Town of Canton Planning and Zoning Code along with the requirements of this local law which shall control in the event of any inconsistencies, and shall be:

1. Reviewed by the Code Enforcement Officer for completeness then submitted to the Planning Board for a final determination of 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 Anaerobic Digester in Decommissioning, Site Plan and Development, Special Use and Development, Ownership Changes, Safety, and Permit Time Frame and Abandonment. Applicants shall be advised within ten [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 Planning Board of the Town of Canton shall have a notice printed in a newspaper of general circulation in the Town of Canton 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 Planning Board at the public hearing.
3. Referred to the County Planning Board pursuant to General Municipal Law § 239-m if required.
4. Upon closing of the public hearing, the 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 Planning Board and Applicant.
5. Site Plan Application. For a Large Anaerobic Digester, site plan approval shall be required. Any site plan application shall include the following information:
 - a. Property lines and physical features, including roads, for the project site.
 - b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.

- c. A diagram detailing the Anaerobic Digester Local layout, associated components, and piping and equipment.
- d. A preliminary equipment specification sheet that documents the proposed Anaerobic Digester components and associated equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- e. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the digester. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- f. 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 anaerobic digester.
- g. Zoning district designation for the parcel(s) of land comprising the project site.
- h. 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, Anaerobic Digester Local 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 Code Enforcement Officer or Reviewing Board prior to final inspection and approval and maintained at an approved on-site location.
- i. 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.
- j. Operation and Maintenance Manual. Such plan shall describe continuing Anaerobic Digester 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.

k. 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.

l. 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.

m. 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 near the entrance of the facility to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:

- i. 24-hour contact information of facility personnel and system owners.
- ii. Procedures for safe shutdown, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, explosion, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
- iii. Procedures for inspection and testing of associated alarms, interlocks, and controls.
- iv. Procedures to be followed in response to notifications from the digester 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.
- v. 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.
- vi. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
- vii. Procedures for dealing with Anaerobic Digester equipment damaged in a fire or other emergency event, including maintaining contact information

for personnel qualified to safely remove damaged Anaerobic Digester equipment from the property.

- viii. Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders, including but not limited to periodic inspections by the Code Enforcement Officer.
 - ix. Procedures and schedules to conduct drills and training for local first responders on the contents of the plan and appropriate response procedures.
- n. Decommissioning Plan. The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:
- i. A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all Anaerobic Digester components, structures, piping, equipment, security barriers, and transmission infrastructure from the site;
 - ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
 - iii. The anticipated life of the system;
 - iv. The estimated decommissioning costs prepared by an independent, third-party NYS Licensed Professional Engineer, 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 anaerobic digester from service, and for removing an energy storage system from service that has been damaged by a fire or other event.

J. Decommissioning Fund. The owner and/or operator of the anaerobic digester shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town for the removal of the digester, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant.

K. The Town of Canton has established that there shall be a Community Benefit to maximize the benefits of a large anaerobic digester project to the Town of Canton and its residents. The benefit shall be determined via an agreement negotiated between the Town and the developer/owner, and shall include, but not be limited to a road use agreement.

L. The Applicant shall deliver to the Town Board via the Town Supervisor, an amount equal to one percent (1%) of the estimated cost of the project (the "Initial Deposit"), to a maximum Initial Deposit of Thirty Thousand Dollars (\$30,000.00). This sum shall be held by the Town in a non-interest-bearing account, and these funds shall be available to the Town to pay consultants and attorneys engaged by the Town to assist in application review if a local permit is sought, and to pay consultants and attorneys engaged by the Town to assist in review. Following the grant or denial of the state or local application, the Town shall return to the Applicant any excess remaining in escrow. If the escrow account has been depleted prior to grant or denial of the application, the Applicant shall deposit such funds necessary for the Town to pay any outstanding fees to said consultants.

M. Ownership Changes. If the owner of an Anaerobic Digester 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 Anaerobic Digester shall notify the Code Enforcement/Zoning Enforcement 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 Code Enforcement Officer in writing with a copy to the Town Supervisor. The special use permit and all other local approvals for the Anaerobic Digester would be void if a new owner or operator fails to provide written notification to the Code Enforcement 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.

N. Permit Time Frame and Abandonment

i. The Special Use Permit and site plan approval for a Anaerobic Digester Local 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 [Planning Board], within 24 months after approval, the Town 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.

ii. The Anaerobic Digester Local shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with 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 an Anaerobic Digester Local and restoration of the site in accordance with the decommissioning plan.

O. The fees for a Special Use Permit, Site Plan Review, and Building Permit for a Large or Small Anaerobic Digester shall be set from time to time by Town Board resolution.

7. Enforcement.

Any violation of this Anaerobic Digester Local Law shall be subject to the same enforcement requirements and penalties, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town.

8. 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.

Date

Town Clerk
Town of Canton