

# Local Law Filing

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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 YORK

Local Law No. 2 of the year 20 21

A local law For a six(6) month Moratorium and Prohibition withi<sup>n</sup>  
(Insert Title)  
the Town of York, Liv. County, NY, relating to  
application for, permitting of, approval of or  
installation of Lg. Scale Battery Energy Storage  
System Installations.

Be it enacted by the TOWN BOARD of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one:)

of YORK as follows:

" See Attached documentation"

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

# **TOWN OF YORK LOCAL LAW NO. 2 of 2021**

## **A LOCAL LAW ESTABLISHING A TEMPORARY LAND USE MORATORIUM PROHIBITING LARGE SCALE BATTERY ENERGY STORAGE SYSTEM INSTALLATIONS WITHIN THE TOWN OF YORK**

Be it enacted by the Town Board of the Town of York as follows:

### **SECTION 1. TITLE**

This Local Law shall be known as the “Moratorium on and Prohibition of Large Scale Battery Energy Storage System Installations within the Town of York.”

### **SECTION 2. STATUTORY AUTHORITY; PURPOSE AND INTENT.**

This local law is promulgated and adopted pursuant to Municipal Home Rule Law and the State Environmental Quality Review Act, and its implementing regulations. It expressly supercedes any provisions of the Town Code of the Town of York, and sections 267, 267-a, 267-b, 267-c, 274-a, 274-b and 276 of the Town Law of the State of New York. Furthermore, this chapter shall supercede the New York State Environmental Conservation Law section 3-0301(1)(b), 3-0301(2)(m) and 8-0113 and 6 NYCRR Part 617, also known as the State Environmental Quality Review Act, as it pertains to applications that are neither excluded nor exempt from this local law.

This Local Law is a land use regulation and is intended and is hereby declared to address matters of local concern, and not matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive “incidental control” of a zoning law and land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as potential negative impacts of such uses on a community.

This Local Law shall supersede and suspend those provisions of the Zoning Ordinance of the Town of York and New York state law which require the Planning Board and/or the Town Code Enforcement officer to accept, process, and approve land use applications within certain statutory time periods.

This Local Law is intended to temporarily prohibit the creation or siting of large scale battery energy storage system installations (as herein later defined) within the Town of York for a period of up to six (6) months, pending the development and adoption of local laws and/or ordinances designed to regulate and govern such installations.

On or about September 12, 2019, the York Town Board duly adopted a previous one year "Moratorium Prohibiting Large Scale Battery Energy Storage System installations within the Town of York" (hereafter "Previous Moratorium").

During the term of the Previous Moratorium, the Town began conducting research on the subject of large scale battery energy storage system installations and constituted a committee to continue such research, which included reviewing various versions of model legislation being used by other communities and resources made available from the New York State Energy Research and Development Authority and the New York State Department of Agriculture and Markets. The Committee also began discussing proposed legislation to create new zoning text that will assist in properly regulating the siting of large scale battery energy storage systems within the Town of York. Prior to completing such tasks, the State of New York was placed under a declared State of Emergency relating to the Covid 19 Pandemic, which resulted in numerous Executive Orders that prevented the Town Board and the committee from progressing with the finalization of appropriate legislation to create such new zoning text relating to the siting of large scale battery energy storage system installations.

The Town Board recognizes and acknowledges that the Town needs additional time to complete and adopt appropriate local legislation to regulate the future creation and siting of large scale battery energy storage system installations in a fashion that best maintains and preserves the identity of the Town and its strong agricultural history.

It is deemed necessary to enact this additional moratorium in order to permit the Town Board adequate time in which to complete suitable legislation to allow for proper siting and development of the battery energy storage system industry. During the term of the moratorium the Town of York shall work to finalize and adopt the new land use local law.

At present, the Zoning Ordinance of the Town of York does not adequately regulate such land use. If the community allows such development during that time, the goals of the Town could be undermined or damaged. Moratoria are useful in controlling or temporarily inhibiting development until satisfactory final regulations are adopted.

For these reasons, the Town Board finds that temporary moratorium legislation is both advisable and necessary for a reasonable and defined period of time in order to develop and adopt necessary zoning and land use changes to the Zoning Ordinance of the Town of York, thus protecting and furthering the public interest, health and safety.

### **SECTION 3. DEFINITIONS.**

For purposes of this Local Law, the following terms shall have the meanings respectively set forth below:

**Large Scale Battery Energy Storage System Installation(s)** - Any installation of a rechargeable energy storage system having an aggregate energy capacity of 600kWh or more, consisting of electrochemical storage batteries or similar technology, battery chargers, controls, power conditioning systems, inverters, transformers, switchgears and associated electrical equipment designed to store electrical power received from a generating or transmission source and periodically discharging power from the battery energy storage system into the power grid. Systems typically used to provide standby or emergency power and/or an uninterruptable power supply, load shedding, load sharing, or similar capabilities relating to the energy consumed by a residence, farm operation or other business on site and having an aggregate energy capacity of less than 600kWh shall not be considered a "Large Scale Battery Energy Storage System Installation" for purposes of this Moratorium.

#### **SECTION 4. TEMPORARY MORATORIUM and PROHIBITION.**

- A. Unless permitted pursuant to Section 5 hereafter, from and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval of any nature shall be accepted, processed, considered, entertained, approved, approved conditionally, or issued by any board, employee, official or agent of the Town of York, for the construction, establishment, or use or operation of any land, building, or other structure located within the Town of York, for any Large Scale Battery Energy Storage System Installation, as defined above.
- B. Unless permitted pursuant to Section 5 hereafter, from and after the date of this Local Law, no person, entity or business shall use, cause, or permit to be used, any land, building, or other structure located within the Town of York for any Large Scale Battery Energy Storage System Installation, as defined above.
- C. The prohibitions set forth above in Clauses A. and B. of this Section 4. are not intended, and shall not be construed, to prevent or prohibit the use and development of battery energy storage systems that are typically used to provide standby or emergency power and/or an uninterruptable power supply, load shedding, load sharing, or similar capabilities and that are for personal or individual use on or about any residence or place of business, or any farm operation, so long as such use does not have an aggregate energy capacity of 600kWh.
- D. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is six (6) months after said effective date; or (ii) the effective date of a Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.

- E. This moratorium and prohibition shall apply to all real property within the Town of York, and all land use applications for the siting or creation of Large Scale Battery Energy Storage System Installation within the Town of York.
- F. Under no circumstances shall the failure of the Town Board of the Town of York, the Zoning Board of Appeals of the Town of York, the Planning Board of the Town of York, or the Code Enforcement Officer for the Town of York, to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or any other Town-level approval related to a Large Scale Battery Energy Storage System Installation constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

**SECTION 5. HARDSHIP VARIANCE RELIEF FROM APPLICABILITY OF MORATORIUM.**

Applications for land use otherwise subject to this moratorium may be exempted from the provisions of this local law following a noticed public hearing before the Town Board (which said public hearing shall take place not more than thirty (30) days after the Town Board receives a complete written application seeking such relief), at which hearing the Town Board shall consider:

- A. The proximity of applicant's premises or the subject of applicant's request for relief to natural resources, including but not limited to prime agricultural soils, wetland areas, conservation districts and other environmental concerns.
- B. The impact of the proposed application on the applicant's premises and upon the surrounding area.
- C. Compatibility of the proposed application with the existing land use and character of the area in general proximity to the subject of the application, and its effect upon aesthetic resources of the community.
- D. Compatibility of the proposed application with the recommendations of any administrative body charged with such review by the Town of York.
- E. The written opinion of the Town of York Planning Board, Zoning Board of Appeals and the Town of York Code Enforcement Officer that such application may be jeopardized or made impractical by waiting until the moratorium is expired.
- F. Evidence specifying in detail describing the nature and level of any alleged hardship imposed on the property owner(s) as a result of this moratorium.

- G. Such other reasonable considerations and issues as may be raised by the Town Board.

The Town Board shall have sixty (60) days after conducting the public hearing to make a determination on the requested relief. In making a determination concerning a proposed exemption or grant of relief from application of the moratorium, the Town Board may obtain and consider reports and information from any source it deems to be consistent with review of said application. A grant of relief from application of the moratorium shall include a determination of unreasonable hardship upon the property owner which is unique to the property owner, and a finding that the grant of an exemption will be in harmony with, and will be consistent with the recommendations of the Comprehensive Plan.

An application for relief of the prohibitions under the moratorium shall be accompanied by a non-refundable application fee of \$2,500.00, together with the applicant's written undertaking, in a form to be approved by the Town Attorney, to pay all of the expenses of the Town Board and any agent or consultant utilized by the Town Board to evaluate and consider the merits of such application. The Town Board may require the applicant to provide an up-front payment to be made in an amount determined by the town Board to cover such consulting fees, which said amount shall be placed in escrow and used to pay such consulting fees as they become due. Such consulting fees shall not be reimbursed in the event that applicant's request for relief is denied.

#### **SECTION 6. CONFLICTS.**

For and during the stated term of this legislation, unless the stated term thereof shall be modified or abridged by the Town Board, this moratorium shall take precedence over and shall control over any contradictory local law, ordinance, regulation or Zoning Ordinance provision.

#### **SECTION 7. SEVERABILITY.**

The invalidity of any word, section, clause, sentence, paragraph, part or provision of this local law shall not affect the validity of any other part of the law which can be given effect without such invalid part or parts.

#### **SECTION 8. EFFECTIVE DATE.**

The effective date of this Local Law shall be immediately upon its filing with the Secretary of State.