

NEW YORK STATE DEPARTMENT OF STATE  
41 STATE STREET  
ALBANY, NY 12231

**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.

Town of Oyster Bay

Local Law No. 3 of the year 2024

A local law entitled "A LOCAL LAW TO ADD SECTION 246-5.5.35 to CHAPTER 246 OF THE CODE OF TOWN OF OYSTER BAY TO IMPOSE A SIX (6) MONTH MORATORIUM ON THE ESTABLISHMENT OF BATTERY ENERGY STORAGE SYSTEMS ("BESS") IN THE TOWN OF OYSTER BAY"

Be it enacted by the Town Board  
of the

Town of Oyster Bay as follows:

**Section 1.** Add Section 246-5.5.35, Battery Energy Storage Systems to Chapter 246, Zoning, of the Town Code as follows:

**§246-5.5.35.1 Legislative Intent.**

The Board finds that it is in the best interest of the Town of Oyster Bay and its residents to impose a six (6) month moratorium on the establishment of Battery Energy Storage Systems ("BESS") in the Town of Oyster Bay. BESS offer a role in reducing demand and costs associated with grid infrastructure operation and expansion, by storing energy from the grid during off peak hours and redistributing energy back during peak demand. The deployment of BESS can potentially reduce the need of costly expansions of the grid by utility companies, and deters the use of fossil fuels during times when energy use is highest.

Recently, there has been a significant amount of public concern regarding the volatile nature of lithium ion batteries, and the potential threat to the health and safety of the communities surrounding these facilities. There have been reports of fires at these facilities throughout the State of New York over the past two (2) years, raising concerns about the impact to the environment, as well as the stress put on roadways and infrastructure in the event an evacuation is necessary.

These concerns, coupled with the Town of Oyster Bay's need for additional information and assurance about the safety of these types of facilities, including but not limited to ensuring local fire districts will be able to suppress a fire should one occur, the availability of built-in fire suppression and/or other safety measures, precautions related to gas emissions and deterring any necessary fire suppression chemicals from impacting groundwater, possible decommission plans, and the adequacy of location and other special exception standards for siting these facilities, has caused the Town Attorney's Office, Department of Planning and Development, and Department of Environmental Resources to advise the Town Board to take pause on the Zoning Code and consider the enactment of a six (6) month limited moratorium for the review of permitting of BESS pursuant to Town Zoning Code, while these issues are further considered and the law is adequately revised to address any outstanding concerns, including the potential for catastrophic failures and evacuation planning.

#### **§246-5.5.35.2 Definitions**

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

##### **APPLICATION**

Any request or application for the development of battery energy storage systems to include any special use exemption, area or use variance applications related to battery energy storage systems throughout the Town of Oyster Bay.

#### **§246-5.5.35.3 Moratorium**

No new land use applications shall be accepted, nor shall any pending applications continue to be processed or decided by the Town Board, the Planning Advisory Board, the Zoning Board of Appeals, or any other agency, department or office of the Town of Oyster Bay during the moratorium period.

#### **§246-5.5.35.4 Moratorium Period**

This moratorium shall be in effect for a period of six months following adoption of this chapter, and the filing of the same with the Secretary of State. The same may be extended by appropriate action of the Town Board.

#### **§246-5.5.35.5 Exclusions**

None.

#### **§246-5.5.35.6 Applications That May Be Exempted**

- A. Applications may be exempted from the provisions of this chapter following a public hearing on due notice before the Town Board. Upon such application, the Town Board shall consider:

- (1) The size of the subject parcel;
  - (2) The proximity of the applicant's premises to wetlands, endangered plant and animal species, wildlife, and other similar environmental concerns;
  - (3) The extent of the proposed development and/or disturbance of the applicant's premises;
  - (4) The environmental significance, if any, of the applicant's parcel and the proposed development's impact upon the environment, including existing transportation resources; and
  - (5) Compatibility of the proposed development with the aesthetic resources of the community or with the existing community or neighborhood character.
- B. In making a determination under this subsection, the Town Board may obtain and consider written reports from the Departments of Planning and Development and Environmental Resources, and such other sources as required in the judgment of the Town Board and consistent with the purpose of this chapter. A grant of an exemption to an applicant's premises shall include a determination of hardship and unique circumstances which do not generally apply throughout the Town and a finding that the grant of an exemption will be in harmony with, and will not be unduly disruptive to, the goals and purposes of the assessment undertaken pursuant to this chapter. The Town Board shall also apply the statutory standards for granting a use or area variance in considering such an exemption. Should a hardship exemption be granted by the Town Board, the exempted development project shall be subject to all applicable provisions of the Code of the Town of Oyster Bay.
- C. An application under this subsection shall be accompanied by a fee of \$1,000 and 18 copies of the application, together with the applicant's written undertaking to pay all out-of-pocket costs incurred by the Town in studies and/or by retainer of resource personal relating to the hearing, review, and determination of such application, in form and substance acceptable to the Town Board.

**§246-5.5.35.7 Statutory authority/supersession**

This chapter is adopted pursuant to Municipal Home Rule Law § 10, Subdivision 1(ii)(a)(11) and (12), and expressly supersedes any inconsistent provisions of Chapter 246 of the Oyster Bay Town Code, as well as Article 16 of New York State Town Law. In particular, this chapter shall supersede those provisions of the Town Code and New York State law which require the Town Board, Planning Board, and/or Zoning Board of Appeals to accept, process and/or approve applications within specified statutory time periods.

**§246-5.5.35.8 Penalties**

Any person, firm, corporation, or other entity, which shall construct, erect or install any building, improvement, or structure, or subdivide, or use of land in violation of provisions of this local law,

shall be guilty of a violation, punishable by fine of not less than one thousand dollars (\$1,000) for each day that such violation exists. Nothing hererin shall be construed so as to limit authority of the Town to seek and obtain injunctive relief for any such violation or violations.

**Section 2. SEQR Determination.**

It is hereby determined pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L. Section 101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., that the adoption of this local law is a "Type II" Action within the meaning of Section 617.5 (c)(26) of 6 N.Y.C.R.R., pertaining to "routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment", and Section 617.5 (c)(36) of 6 N.Y.C.R.R., pertaining to, " adoption of a moratorium on land development or construction;, accordingly, is of a class of actions which do not have a significant effect on the environment and no further review is required.

**Section 3. Severability.**

If any section, subdivision or provision of this local law or the application thereof to any person or circumstance be adjudged invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the section, subdivision or provision of or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law, or the application thereof to other persons or circumstances.

**Section 4. Effective Date.**

This local law shall take effect immediately upon its adoption and filing with the Office of the Secretary of State.

**Certification:**

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2024 of the Town of Oyster Bay was duly passed by the Town Board on April 9 2024, in accordance with the applicable provisions of law.

  
\_\_\_\_\_  
Clerk of the Town of Oyster Bay

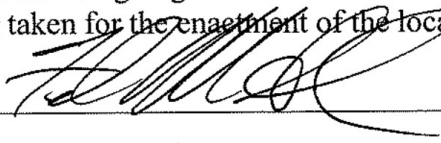
Date: April 9, 2024

(Seal)

STATE OF NEW YORK )  
COUNTY NASSAU )

ss.:

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

  
\_\_\_\_\_

Signature

\_\_\_\_\_ Town Attorney

Town of \_\_\_\_\_ Oyster Bay

Date: \_\_\_\_\_ April 9 \_\_\_\_\_ 2024