

September 16, 2025
Public Hearing #2

WHEREAS, on the 19th of March 2024, the Town Board duly adopted Ordinance No. 68-457, declaring a six-month moratorium on the issuance and further processing of permits and approvals for Battery Energy Storage Systems (“BESS”) pursuant to Section 68-456 of the Islip Town Code to protect the health, safety and welfare of the public; and

WHEREAS, the current moratorium period is set to expire on September 30, 2025, and the Town Board now wishes to amend Ordinance No. 68-457 to extend the BESS moratorium period for an additional twelve (12) months;

WHEREAS, the intention of the moratorium, as originally enacted and subsequently extended, was and remains to provide the Town of Islip with sufficient time to thoroughly evaluate and consider the updated New York State Fire Prevention and Building Code, which includes specific BESS provisions, recently approved for adoption by the New York State Fire Prevention and Building Code Council with an anticipated effective date of December 31, 2025; and

WHEREAS, the proposed extension is both reasonable and necessary to allow the Town to await the formal adoption of the updated Code, thoroughly review the Code update and draft an amendment to the current BESS Code, Section 68-456 of Islip Town Code, that is consistent with—rather than in contravention of—the new standards, thereby supporting the safe construction and operation of BESS units while protecting the residents of the Town of Islip, the surrounding community, public infrastructure, and the safety of first responders; and

WHEREAS, pursuant to New York State General Municipal Law Section 239-m, the proposed amendment was referred to the Suffolk County Planning Commission on July 29, 2025;

WHEREAS, the Town Clerk has placed a Public Notice in the newspaper circulated

locally which indicates the language and the purpose of the proposed ordinance;

NOW, THEREFORE, on motion of Councilperson James P. O'Connor,
seconded by Supervisor Angie M. Carpenter, be it

RESOLVED, the Town Board hereby adopts the amendments to Ordinance No. 68-457 of
the Islip Town Code as follows:

SEE ATTACHED

Additions are indicated by UNDERLINING

Deletions are indicated by ~~STRIKEOUTS~~

Upon a vote being taken the result was: 5-0

Article XLII **Alternative Energy Systems**

§ 68-457 Moratorium for the Development of Battery Energy Storage Systems

A. Authority.

This moratorium is adopted pursuant to Article IX of the New York State Constitution, §2(c)(6) and (10), New York Statute of Local Governments, § 10, Subdivisions 1 and 7, §§ 261 through 263 of the Town Law, and § 10 of the Municipal Home Rule Law of the State of New York. 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 for the development of Battery Energy Storage Systems within specified statutory time periods.

B. Legislative intent.

This ordinance is adopted to extend the ~~impose a six-month~~ moratorium on the issuance of permits and/or approvals for Battery Energy Storage Systems for an additional twelve (12) months until September 30, 2026. The Town of Islip recognizes that Battery Energy Storage Systems (“BESS”) are a key component to the viability and promotion of renewable energy sources. However, since the technology of these systems is still in its infancy, there is a significant amount of recent public concern about the potentially volatile nature of lithium-ion batteries, which stems from fires at three different BESS facilities in the State of New York from May through July of 2023. In response to the recent BESS fires, New York State Governor Kathy Hochul found it necessary to form an Inter-Agency

Fire Safety Working Group tasked with ensuring the safety of BESS across New York. On July 20, 2024, the New York State Inter-Agency Fire Safety Working Group (“Working Group”) issued their Fire Code Recommendations to the New York State Fire Prevention and Building Code Council for future code installments. Shortly thereafter on July 25, 2024, the New York State Fire Prevention and Building Code Council (“Code Council”) issued their Final Draft Proposed Changes to the 2020 Fire Code of New York State. At the July 25, 2025 Code Council meeting, the Code Council voted to adopt an updated Fire Code, inclusive of language specific to Battery Energy Storage Systems (BESS). The updated Fire Code has an anticipated effective date of no earlier than December 31, 2025. At this point, it is unclear whether the Code Council will consider or adopt the recommendations set forth by the Working Group. The Town acknowledges the importance of awaiting the formal adoption and effective date of said updated Code before it can amend its current BESS Code to effectively address all safety and environmental concerns.

Since the enactment of the moratorium, the Town has worked diligently to research and analyze the safety issues related to Battery Energy Storage Systems (“BESS”) and identify potential solutions. The Town has consulted an expert in the field to assist in drafting Code amendments intended to address and mitigate the identified safety concerns. Given that the expiration date of the Town of Islip’s BESS moratorium is quickly approaching and the impending adoption of the revised Fire Code ~~very recent publication of the respective State recommendations and changes,~~ the Town Board finds it reasonable and necessary to extend the moratorium period for an additional twelve ~~six (6)~~ (12) months.

The Town Board, Planning Board, and Zoning Board of Appeals need additional information and assurances about the safety of these types of facilities, including but not limited to best practices for fire suppression and emergency response, ensuring the technology and availability of equipment necessary for the Town’s Hazardous Materials Unit and local fire departments should a fire occur, precautions to take related to gas emissions and deterring any necessary fire suppression chemicals from impacting groundwater, and the adequacy of location and other standards for siting these facilities. Given these concerns and the current lack of relevant data and information on this issue, it is necessary for the Town Board to ~~enact a six (6) month~~ extend the limited moratorium for an additional twelve (12) months until September 30, 2026, on the issuance of permits and/or approvals for BESS pursuant to Town Code § 68-456 while these issues are further considered and the Code is adequately revised to address any outstanding concerns.

The Town requires an additional twelve ~~six (12 6)~~ months to thoroughly vet and consider the recommendations and changes proposed by the Working Group, as well as the Code Council to aid in its preparation of amendments to the Town’s current BESS Code Section 68-456. An extension of the moratorium is necessary to complete the legislative intent

initially set forth by the Town Board on March 19, 2024. To allow the moratorium to expire at this point is premature.

C. Definitions.

The applicable definitions for this section shall be the same as those set forth in § 68-456.

D. Moratorium.

No new permit, land use application, or request for the development of BESS shall be accepted pursuant to § 68-456, nor shall any pending applications continue to be processed or decided by the Town Board, the Planning Board, or the Zoning Board of Appeals, or any other agency, department, or office of the Town of Islip during the Moratorium Period.

No building permit, BESS permit, or Planning Board special permit for BESS shall be issued by the Town Board, the Planning Board, the Zoning Board of Appeals, or any other agency, department, or office of the Town of Islip during the Moratorium Period.

E. Moratorium Period.

The moratorium period shall be in effect ~~for a period of six (6) twelve (12) months following the effective date of this ordinance. Upon the expiration date of the first second extension of the moratorium period on April through September 30 7, 20256, this moratorium is hereby extended for an additional six (6) twelve (12) months. The moratorium extension shall be in effect from the effective date of this amendment and shall run for a period of six (6) twelve (12) months. When this extension period has expired, this moratorium shall be without force and effect unless the moratorium is extended by a Town Board resolution. Notwithstanding the foregoing, the moratorium period shall not exceed eighteen (18) months.~~

F. Exclusions.

This ordinance shall not apply to Tier 1 BESS, as defined by Section 68-456(c) of the Islip Town Code, that have an aggregate energy capacity less than or equal to 80 kWh.

G. Applications that may exempted.

- 1) In reliance upon the initial findings issued by the New York State Inter-Agency Fire Safety Working Group, which were released on December 21, 2023 and determined that there has been no evidence of significant off-site migration of contaminants associated with the three (3) recent fires at BESS facilities in Jefferson County, Orange

County, and Suffolk County, the Town of Islip has set forth below a pathway for certain qualified applications to be exempted from this moratorium.

- 2) Applications may be exempted from the provisions of this ordinance following a public hearing on due notice before the Town Planning Board and service of a written notice upon the local Fire Department for the proposed siting of the BESS. Upon such application, the Planning Board shall consider:
 - a. The emergency response plan including evacuation orders to be followed in the event of a fire or any other emergency at the facility and satisfactory evidence that precautions are in place to suppress a fire and mitigate the extent of damage to the surroundings and environment;
 - b. The size of subject parcel and the wattage of the BESS facility;
 - c. The proximity of the applicant's proposed BESS facility to residential areas as well as sensitive and high-risk populations including but not limited to hospitals, nursing homes, assisted living facilities, schools;
 - d. The extent of the proposed development and/or disturbance of the applicant's premises;
 - e. The environmental significance, if any, of the applicant's parcel and the proposed development's impact upon the environment, including existing transportation resources;
 - f. Compatibility of the proposed development with the aesthetic resources of the community or with the existing community or neighborhood character;
 - g. Compatibility of the proposed development with the recommendations of the Master Plan, the Comprehensive Plan Update, and all adopted Comprehensive Plans and plan elements henceforth; and
 - h. Whether the application meets the minimum requirements of Section 68-456.
- 3) In making a determination under this subsection, the Planning Board may obtain and consider written reports from the Town of Islip Hazardous Materials Unit and such other sources as required in the judgment of the Planning 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 ordinance.
- 4) An application under this subsection must be accompanied by a \$1,000.00 fee and 8 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 personnel relating to this hearing, review and determination of such application, in form and substance acceptable to the Planning Board.

H. Compliance with SEQRA.

Pursuant to 6 NYCRR Section 617.5(c)(36), the imposition of a six-month moratorium is a Type II action, and therefore, no further SEQRA review is required.

I. Enforcement.

Any violation of the moratorium shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town of Islip.

J. Severability.

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of this ordinance, as declared by the valid judgment of any court of competent jurisdiction, 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.

K. Effective Date.

This ordinance shall take effect ten (10) days after the text of the ordinance, or a summary or abstract thereof, is published in either the official newspaper of the Town of Islip or, if there is none, in a newspaper designated by the Town Board having general circulation in the Town pursuant to New York State Town Law §§ 133 and 264.