

Proposed by Supervisor Arsenault

Proposed Town of Long Lake Local Law (Introductory) No. 3 of 2023

Proposed July 26, 2023
Town of Long Lake
County of Hamilton, New York

Be it enacted by the Town Board of the Town of Long Lake, Hamilton County, New York as follows:

Section A—Title and Enactment

The title of this Law is: MORATORIUM AMENDMENT TO THE TOWN OF LONG LAKE BATTERY ENERGY STORAGE SYSTEM LAW.

Section B—Amendment

Town of Long Lake Local Law No. 1 of 2023 “ The Town of Long Lake Battery Energy Storage System Law” is amended by adding the underlined words as follows:

Section 14. Moratorium Legislative Intent

On April 20, 2023 the Town Board enacted Local Law # 1 of 2023 “Battery Energy Storage System Law” to advance and protect the public health, safety, welfare, and quality of life of Town by creating regulations for the installation and use of battery energy storage systems, with the objectives set forth in Section 3 -Statement of Purpose. In addition, the Town Board adopted Local Law 2 of 2022 adopted on December 28, 2022 to upgrade its building code program which provides for building permits and operating permits for certain types of facilities. It is the intent of this Local Law moratorium provisions to affect all such regulatory provisions of the Town of Long Lake with respect to Tier 2 Battery Electric Storage Systems.

Recently, there has been a significant amount of public concern regarding the potentially volatile nature of lithium-ion batteries and the fear that operation of this type of land use will pose a threat to the health, safety and welfare of the public including the impact upon the surrounding roadways, infrastructure, and the orderly evacuation of improved areas if necessary.

Furthermore, there is a current state of emergency precipitated by the storms of July 2023. The emergency has strained capacity of the administrative staff of the Town of Long Lake to undertake the necessary engagement of consultants and deliberate review of the matters attendant to the modification of the Battery Electric Storage Law and Comprehensive Plan. Consequently, the Town Board must take account of this capacity concern in establishing a moratorium period.

These concerns, coupled with the Board’s need for additional information and assurance about the safety of these types of facilities, including, but not limited to, ensuring the technology and availability of equipment necessary for local fire districts to be able to suppress a fire should one occur, precautions related to air emissions and deterring any necessary fire suppression chemicals from impacting surface and groundwater, and the adequacy of location and other special exception standards for siting these facilities, has persuaded the Town Board to amend the local law pertaining to receipt of applications to construct and operate Tier 2 Battery Electric Storage Systems and to pause any action to consider permitting of BESS under Local Law # 1 of 2023 or any building permit pursuant to Local Law No. 2 of 2022 and therefore is enacting a twelve (12) month limited moratorium for the review and permitting of

Battery Energy Storage Systems pursuant to those Local Laws and to further consider revisions to address any outstanding concerns, including the potential for catastrophic failures and evacuation planning.

As a separate matter, the Town Board shall also use the moratorium period to consider revision of its Comprehensive Plan first adopted on January 27, 2021.

Section 15 Moratorium.

No new applications for a permit or building permit or operating permit application for Tier 2 Battery Electric Storage Systems shall be accepted pursuant to Local Law # 1 of 2023 and Local Law 2 of 2022, nor shall any pending applications continue to be processed or decided by the Town Board, during the Moratorium Period as provided under this Local Law.

Section 16 Moratorium Period.

The moratorium established under Section 15 shall be in effect during the period between the adoption of this Local Law and for a period of 12 months following adoption of this local law, and the filing of the same with the Secretary of State. The same may be extended by appropriate action of the Town Board.

Section 17 Applications that may be exempted.

(1) Applications may be exempted from the Moratorium provisions of this Local Law, following a public hearing on due notice before the Town Board. Upon such application, the Town Board shall consider:

- a. The size of the subject parcel;
- b. The proximity of the applicant's premises to wetlands, endangered plant and animal species, wildlife, and other similar environmental concerns;
- c. The extent of the proposed development and/or disturbance of the applicant's premises;
- d. The environmental significance, if any, of the applicant's parcel and the proposed development's impact upon the environment, including existing transportation resources;
- e. Compatibility of the proposed development with the aesthetic resources of the community or with the existing community or neighborhood character; and
- f. Compatibility of the proposed development with the recommendations of the Comprehensive Plan Update and all adopted Comprehensive Plans and Plan Elements henceforth.

(2) In making a determination under this Subsection, the Town Board may obtain and consider written reports from such other sources as required in the judgment of the Town Board and consistent with the purpose of this this Local Law and Local Laws. 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.

(3) An application under this subsection shall be accompanied by a fee of \$1,000.00 and ten (10) 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 the hearing, review, and determination of such application, in form and substance acceptable to the Town Board.

Section 18 Statutory Authority/Supersession.

This MORATORIUM AMENDMENT TO THE TOWN OF LONG LAKE BATTERY ENERGY STORAGE SYSTEM LAW is adopted pursuant to Municipal Home Rule Law §10(1)(ii)(a)(11) and (12), and expressly supersedes any inconsistent provisions of Local Laws No. 1 of 2023 and No. 2 of 2022.

Section C 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.

Section D Effective Date

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

[End text of proposed Local Law No. 3 of 2023]