

Local Law 1 of 2024

IMPOSING A TWELVE (12) MONTH MORATORIUM ON BATTERY ENERGY STORAGE SYSTEMS (BESS) WITHIN THE TOWN OF WILLING

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

SECTION 1. AUTHORITY.

This Local Law is enacted pursuant to the New York State Constitution and New York Municipal Home Rule Law §10.

SECTION 2. INTENT.

It is the intent of the Town Board of the Town of Willing to impose a twelve (12) month moratorium on the siting, establishment, placement, installation, construction, erection, modification and/or enlargement of battery energy storage systems within the Town of Willing.

SECTION 3. LEGISLATIVE PURPOSE.

The purpose of this Local Law is to temporarily halt development of battery energy storage systems (BESS), for a period of up to twelve (12) months, while the Town of Willing considers measures to specifically address the matters of the Town of Willing community concern and how it will align with the Town of Willing Comprehensive Plan.

The Town Board recognizes and acknowledges that the Town needs to study and analyze many considerations that affect the preparation of local legislation to regulate battery energy storage systems. In the coming months, the Town will be diligently working towards the development of regulations that will address, in a careful manner, the siting, establishment, placement, installation, construction, erection, modification and/or enlargement of battery energy storage systems on a Town-wide basis and to adopt land use regulations for provisions to specifically regulate same.

SECTION 4. DEFINITIONS.

BATTERY/BATTERIES: A single cell or a group of cells connected together electronically in a series, in parallel or a combination of both, which can charge, discharge and store energy electrochemically. For the purposes of this Law, batteries utilized in consumer products are excluded from these requirements.

BATTERY ENERGY STORAGE MANAGEMENT SYSTEM: An electronic system that protects energy storage systems from operating outside of their safe operating parameters and disconnects when temperatures or other conditions are detected.

BATTERY ENERGY STORAGE SYSTEM (BESS): A rechargeable energy storage system consisting of electrochemical storage batteries, battery chargers, controls, power conditioning systems and associated electrical equipment designed to store energy to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 Energy Storage System as follows:

- A. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
- B. Tier 2 Battery Energy Storage Systems have an aggregate capacity greater than 600 kWh or are comprised of more than one storage battery technology in a room or enclosed area.

Such systems shall include so-called "independent" or "stand-alone" systems or systems which are incidental to another primary use, including but not limited to any wind energy or solar energy systems.

CELL: The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store and deliver electrical energy.

SECTION 5. MORATORIUM.

- A. The Town Board hereby enact a moratorium which shall prohibit the siting, establishment, placement, installation, construction, erection, modification and/or enlargement of battery energy storage systems anywhere within the Town of Willing.
- B. This moratorium shall be in effect for a period of twelve (12) months from the effective date of this Local Law and shall expire on the earlier of
 - (i) the date twelve (12) months from said effective date of this Local Law, unless renewed; by resolution ; or
 - (ii) the enactment by the Town Board of a resolution indicating that the Town Board is satisfied that the need for the moratorium no longer exists.
- C. This moratorium shall apply to all real property within the Town of Willing.
- D. Battery energy storage systems which have previously been approved and/or are located on Town-owned property are hereby expressly excluded from this moratorium and may be sited, established, placed, installed, constructed, erected and/or operated in accordance with the approved plans. Further modification, enlargement and/or alteration of previously approved battery energy storage systems is prohibited while the moratorium is in effect.

SECTION 6. RELIEF FROM PROVISIONS OF THIS LOCAL LAW.

- A. The Town Board reserves to itself the power to vary or adapt the strict application of the requirements of this Local Law in the case of unusual hardship which would deprive the land owner of all reasonable use of the lands involved.
- B. Application for relief shall be filed in triplicate with the Town Code Enforcement Officer, together with a filing fee of \$250.00. The application shall specifically identify the property involved, recite the circumstances pursuant to which the relief is sought and the reasons for which the relief is claimed. Any costs, including expert consulting fees or attorneys' fees, incurred by the Town shall be reimbursed to the Town by the Applicant. The Town Board shall apply Use Variance criteria, as set forth in New York State Town Law §267-b(2), in reviewing any application for relief
- C. The Town Board may refer any applications for relief herein to the Town Planning Board for its advice and recommendations, but all decisions on granting or denying such relief shall be made solely by the Town Board after determining whether or not the requested relief is compatible with any contemplated amendments to the Town Law. Unless completely satisfied that the proposed relief is compatible, the Town Board shall deny the application.

- D. The Town Board shall conduct a public hearing on any request for relief within forty-five (45) days of receipt by the Town's Code Enforcement Officer and shall issue its final decision on requests for relief within thirty (30) days from the date of the public hearing.

SECTION 7. PENALTIES.

Any person, firm or corporation that shall establish, place, construct, enlarge and/or erect any battery energy storage systems in violation of the provisions of this Local Law, or shall otherwise violate any of the provisions of this Local Law, shall be subject to:

- A. A fine not to exceed One Thousand and 00/100 Dollars (\$1,000.00) or imprisonment for a term not to exceed fifteen (15) days, or both. Each day a violation continues shall be considered a new violation.
- B. A civil action inclusive of injunctive relief in favor of the Town to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any constructions, improvements or related items or by-products which may have taken place in violation of this Local Law.

SECTION 8. ENFORCEMENT.

This Local Law shall be enforced by the Code Enforcement Office of the Town of Willing or such other enforcement individual(s) as designated by the Town Board. It shall be the duty of the enforcement individual(s) to advise the Town Board of all matters pertaining to the enforcement of this Local Law.

SECTION 9. VALIDITY AND SEVERABILITY.

If any clause, sentence, paragraph, subdivision or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate the remainder thereof but shall be limited in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the proceeding in which such judgment is rendered.

SECTION 10. EFFECTIVE DATE.

This Local Law shall take effect immediately upon passage and thereafter shall be filed with the New York State Department of State. It shall remain in full force and effect for a period of twelve (12) months from the date of passage.