

TOWN OF CHESTER

LOCAL LAW NO. 8 OF 2024

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

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

Section 1. STATUTORY AUTHORITY, PURPOSE AND INTENT.

This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Chester under the New York State Constitution, and the Laws of the State of New York including, but not limited to the following authorities: New York State Constitution Article IX, Section 2 (c)(ii)(6(m)(10), Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law § 10 (4(a), and (b) and (15); Town Law § 135, Town Law Article 16 inclusive; and Environmental Conservation Law § 3-0301(2)(m) and 8-0113.

This Local Law is intended to temporarily prohibit the creation or siting of large-scale battery energy storage system installations (as herein defined) within the Town of Chester for a period of up to twelve (12) months, pending the development and adoption of law laws and/or ordinances designed to regulate and govern such installations.

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 the future creation and siting of large-scale battery energy storage system installations. The Town Board also recognized the need to review and examine its existing ordinances, local laws and Zoning Code provisions insofar as they may be affected by adoption of such local law(s) regulating the creation and/or siting of large-scale battery energy storage system installations. It is deemed necessary to enact this moratorium in order to permit the Town adequate time in which to draft suitable legislation for this purpose. During the term of the moratorium, the Town of Chester shall work to prepare and eventually adopt new land use regulations to incorporate into the Town's existing Zoning Code.

At this time, there are no pending applications for the location, development or site plan approval of large-scale battery energy storage system installation.

During the pendency of the moratorium, the Town Board will consider how best to permit such installations so as to harmoniously integrate such installations with the existing agricultural community and landscape and to mitigate potential undesirable and adverse environmental impacts that may be associated with such use. The existing Town of Chester Zoning Code may not adequately regulate such land use and if such development is permitted during this 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 Town of Chester Zoning Code in the interest of the public health and safety.

## Section 2. DEFINITIONS

For the purpose of this Local Law, the following terms shall have the meanings as 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 600 kWh or more, consisting of electrochemical storage batteries or similar technology, battery chargers, controls, power condition 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 uninterruptible power supply, load shedding, load sharing, or similar capabilities relating to the energy consumed by a residence, farm operation or business on site and having an aggregate energy capacity of less than 600 kWh shall not be considered a “Large Scale Battery Energy Storage System Installation” for purposes of this Moratorium

## Section 3. TEMPORARY MORATORIUM AND PROHIBITION

- A. Unless permitted pursuant to Section 4 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, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval of any nature shall be accepted, processed, entertained, approved, approved conditionally, or issued by any board, employee, official or agent of the Town of Chester, for the construction, establishment, or use or operation of any land, body of water, building or other structure located within the Town of Chester for any Large-Scale Battery Energy Storage System Installation, as defined above.
- B. Unless permitted pursuant to Section 4 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, body of water, building or other structure located within the Town of Chester for any Large-Scale Battery Energy Storage System Installation, as defined above.
- C. The prohibitions set forth in Clauses A and B of this Section 3 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 uninterruptible 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 any aggregate energy capacity of 600 kWh.
- D. This moratorium and prohibition shall be in effect being on the effective date of this Local Law and shall expire on the earlier of (i) that date which is twelve (12) 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 Chester, and all land use applications for the siting or creation of a Large-Scale Battery Energy Storage System Installation within the Town of Chester.
- F. Under no circumstances shall the failure of the Town Board of the Town of Chester, the Zoning Board of Appeals of the Town of Chester, the Planning Board of the Town of Chester, or the Code Enforcement Officer and/or Building Inspector for the Town of Chester to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, certificate of occupancy, certificate of compliance, temporary certificate, or any other Town level approval related to 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 4.      HARDSHIP VARIANCE RELIEF FROM APPLICABILITY OF MORATORIUM.

- A. In order to prevent unlawful taking of property and to prevent irreparable harm, the Town Board is authorized to grant limited relief from this moratorium pursuant to the standards and requirements herein. An applicant seeking such relief shall be required to show by clear and convincing evidence including credible dollars and cents proof, that the applicant cannot make any reasonable use of its property with any of the uses permitted in the relevant zoning district; that the moratorium causes irreparable injury to the applicant; and that it would be unreasonable and unjust not to grant relief from the moratorium. Any relief granted by the Town Board shall be the minimum necessary and the Town Board may impose conditions on any relief granted.
- B. All such applications for relief shall be deemed Unlisted actions under SEQRA. The Town Board shall be declared lead agency for such applications.
- C. The applicant or any other person aggrieved by a decision of the Town Board hereunder may apply to the New York State Supreme Court pursuant to Article 78 of the Civil Practice Laws and Rules.
- D. In the event relief from the moratorium is granted by the Town Board, the applicant shall proceed to other Town board(s) to apply for required development approval(s). Notwithstanding any relief granted pursuant to this section, development approval shall not be granted unless the approved application complies with all zoning and all other requirements in effect on the date of approval.
- E. Following a written request for hardship variance relief, within sixty (60) days of receipt of such request, a noticed public hearing shall be held, at which hearing the Town Board, may, but is not limited to consider:

- i. The proximity of subject premises to natural resources, including but not limited to prime agricultural soils, wetland areas, conservation districts and other areas of environmental concern.
  - ii. The impact of the proposed application on the subject premises and upon the surrounding area.
  - iii. 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 on the aesthetic resources of the community.
  - iv. Compatibility of the proposed application with the recommendations of the Town of Chester Planning Board, Building Inspector, Town Planner and Town Engineer.
  - v. The written opinion of the Town of Chester Planning Board and Code Enforcement Officer/Building Inspector that such application may be jeopardized or made impractical by waiting until the moratorium is expired.
  - vi. Evidence specifying in detail the nature and level of any alleged hardship imposed on the property owner(s) as a result of this moratorium.
  - vii. Such other considerations as may be identified by the Town Board.
- F. In making a determination concerning a proposed exemption or grant of relief from this moratorium, the Town Board may obtain and consider reports and information from any source it deems to be reliable and helpful with the review of said application. A grant of relief from the moratorium shall include a determination of unreasonable hardship upon the property owner which unique to the property owner(s), a finding that there are sufficient existing regulations to adequately govern the application for which a hardship waiver is being requested, and a finding that the grant or an exemption will be in harmony with, and will be consistent with the Town of Chester Zoning Code and the recommendations of the Comprehensive Plan.
- G. An application for relief shall be accompanied by a fee of \$ 500.00, together with an applicant's written undertaking in a form to be approved by the Attorney for the Town to pay all of the expenses of the Town Board and any agent or consultant retained by the Town Board to evaluate and consider the merits of such application, including by not limited to any fees incurred by the Town of services provided by the Town Engineer and Attorney to the Town.

#### Section 5. NOTICE TO APPLICANTS - CHANGE IN ZONING REQUIREMENTS.

This section provides notice to all applicants that although an application authorized in Section 4 above may proceed through the Planning Board and/or Zoning Board of Appeals review process, the applicant proceeds at its risk, because such application may be impacted or denied because of a change in subdivision or planning and zoning requirements. A development

approval shall not be granted unless the approved application complies with all subdivision or planning and zoning and other requirements in effect on the date of approval.

#### Section 6. VIOLATIONS AND PENALTIES

Violation of this local law shall be deemed a violation of the Town of Chester Town Code, Chapter 98 and the penalties set forth in § 98-35 shall apply.

#### Section 7. CONFLICTS

To the extent that any law, ordinance, rule or regulation, or parts thereof, are in conflict with the provisions of this Local Law, including all provisions of Article 16 of the New York State Town Law concerning special use permit, site plan, building permit and certificate of occupancy procedure and requirements, this Local Law shall control.

#### Section 8. SUPERSESSON OF INCONSISTENT LAWS, IF ANY

The Town Board hereby declares its legislative intent to supersede any provision of any local law, rule, or regulation and any provision of the state Town Law or other special law that may be declared inconsistent or in conflict with this local law. The state law provisions that shall be, and hereby are, superseded include, but are not limited to, all of Article 16 of the State of New York Town Law, and any other provision of law that the Village may supersede pursuant to the state Municipal Home Rule Law and the Constitution of the State of New York, The courts are specifically requested to take notice of this legislative intent and apply such intent in the event the Town has failed to specify any provision of law that may require supersession. The Town Board hereby declares that it would have enacted this local law and superseded such provision had it been apparent.

#### Section 9. SEVERABILITY

If any clause, sentence, paragraph, section or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall be confined in its operation to the clause, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered, and the remaining provisions shall remain in full force and effect.

#### Section 10. EFFECTIVE DATE

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.