

Local Law Filing

Village of Port Chester, New York

Local Law No. I-9 of 2024

A LOCAL LAW AMENDING CHAPTER 345 OF THE CODE OF THE VILLAGE OF PORT
CHESTER IMPOSING A TEMPORARY DEVELOPMENT MORATORIUM ON BATTERY
ENERGY STORAGE SYSTEMS IN ORDER TO REVIEW AND MAKE NECESSARY
CHANGES TO THE ZONING CODE

Be it enacted by the Board of Trustees of the Village of Port Chester, New York as follows:

SECTION 1: Purpose and Intent.

Due to the need to increase energy grid resilience, flexibility and stability, attention is increasingly being drawn nationwide to the development of Battery Energy Storage Systems (hereafter “BESS”). These systems serve a number of functions such as providing a back-up source of energy in the event of grid interruption or failure, mitigating energy demand spikes, and enabling utilities to defer costly upgrades to transmission and distribution infrastructure. By far, the predominant component utilized in BESS is lithium-ion batteries.

The Board takes notice that there is an application pending before the Planning Commission for a BESS on North Main Street. The application illustrates that the form-based Zoning Code that was adopted in 2020 did not anticipate BESS, much less provide a sufficient regulatory framework regarding this emerging technology.

On January 16, 2024, the Board adopted a Local Law (Local Law No. 02-2024) Amending Chapter 45 of the Village Code in order to impose a 90-day development moratorium on battery energy storage systems in order to review and make necessary changes to the Zoning Code. This Local Law allowed for an additional 90-day extension for good cause by a resolution adopted by the Board. On April 15, 2024, the Board passed a Resolution to extend the moratorium for an additional 90 days. The Moratorium has since expired.

The Board of Trustees recognizes that it needs additional time to study and analyze many considerations that would affect the preparation of local legislation to regulate the future establishment of BESS. In the exercise of due diligence, the Board will use the moratorium to enable staff to continue to have the opportunity to survey local laws from other jurisdictions, obtain related source materials and ascertain best planning practices in this area. The Board has directed the Village Attorney to assist in this endeavor.

This local law is a land use regulation. It is intended to address matters of local concern, not statewide concern. It is concerned with land use planning and the physical use of land within

the village, including the physical externalities associated with certain land uses, such as potential negative impacts on public safety.

For the foregoing reasons, the Board of Trustees finds that a temporary moratorium is both advisable and necessary for a reasonable and defined period to develop and adopt necessary zoning changes to the Village Code thereby protecting the public interest, health and safety.

SECTION 2: Definition

BATTERY ENERGY STORAGE SYSTEM – One or more devices assembled, containing batteries and related equipment, capable of storing energy in order to distribute electrical energy at a future time. This includes all accessory equipment for energy storage and distribution, including but not limited to inverters, transformers, cooling equipment, switching gear, metering equipment, and other power interconnections, but not including a stand-alone 12-volt car battery or electric motor vehicle or an electric motor vehicle charging station; nor does it include residential home solar generator or back-up battery systems.

SECTION 3: Term of Moratorium.

The term of the moratorium shall be for a period of ninety (90) days from the effective date of this local law or the adoption of new zoning changes whichever comes first.

SECTION 4. Scope of Moratorium.

During the period of the moratorium, the Department of Planning and Community Development, Planning Commission, Zoning Board of Appeals, Board of Trustees and Building Inspector shall not accept, process, entertain, review, approve with or without conditions, or take any action with respect to an application for a building permit, certificate of occupancy, certificate of compliance, zoning amendment, subdivision, site plan, special exception use, variance or interpretation, or request for Building and Lot Plan Approval, involving battery energy storage systems.

SECTION 5. Hardship Relief From Applicability of Moratorium

The Board of Trustees shall have the authority to grant an exemption and waive the application of any provision of this local law, in its legislative discretion, after a public hearing and upon a determination, that such waiver is required to alleviate any unnecessary hardship affecting a property. Any application for an exemption shall be filed with the Village Clerk, accompanied by a fee of two hundred and fifty (\$250) dollars. Within thirty (30) days of receipt of such application, the Board shall hold a public hearing at which the applicant and other parties wishing to present evidence with regard to the application shall have the opportunity to be heard. Within fifteen (15) days of the close of the public hearing, The Board shall render a decision either granting or denying the application, accompanied by supporting findings.

SECTION 6: Extension of Moratorium.

For good cause shown, if it appears that the process of due diligence referred to hereinabove will not be completed within the period of this moratorium, the Board may, by resolution, extend the period of this moratorium for an additional ninety (90) days.

SECTION 7. Supersession.

To the extent that any provisions of this local law are in conflict with or are construed to be inconsistent with the otherwise applicable provisions of Article 7 of the New York State Village Law, this Local Law supersedes, amends and take precedence over same as authorized by the village's municipal home rule powers based on the New York State Constitution, Article IX and Municipal Home Rule Law, Section 10. Any provisions of the Village Code, including Chapters 151 and 345, that are in conflict or inconsistent with the provisions of this local law are also hereby superseded to the extent necessary to give this local law full force and effect.

SECTION 8: Severability

If any clause, sentence, paragraph, section or part of this local law shall be determined by any court of competent jurisdiction to be invalid, the judgment thereon shall not affect the validity of this law as a whole or any part thereof other than the part decided to be invalid.

SECTION 9: Effective Date

This local law shall take effect immediately upon due publication and filing with the Secretary of State.

BY ORDER OF THE BOARD OF TRUSTEES OF
THE VILLAGE OF PORT CHESTER, NEW YORK
Luis A. Marino, Mayor
Janusz R. Richards, Village Clerk

Adopted: August 5, 2024

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 11 of the 2024 of the Village of Port Chester was duly passed by the Village Board of Trustees on August 5, 2024 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. of _ of the Village of Port Chester was duly passed by the Village and was (approved) (not approved) (repassed after disapproval) by the and was deemed duly adopted on in accordance with their applicable provisions of law.

3. (Final adoption by referendum)

I hereby certify that the local law annexed hereto, designated as local law No. ___ of Year 20___ of the Village of Port Chester was duly passed by the _____ on ___, 20___ and was (approved) (not approved) (repassed after disapproval) by the _____ on ___, 20___. Such local law was submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on ___, 20___, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. ___ of 20___ of the Town of Rye was duly passed by the _____ on _____ 20___, and was (approved) (not approved) (repassed after disapproval) by the _____ on _____, 20___. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of ___, 20___, in accordance with the applicable provisions of law.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. ___ of 20___ of the City of ___ having been submitted to referendum pursuant to the provisions of section (36) (37) of the Municipal Home Rule Law, and having received the affirmative vote of the majority of the qualified electors of such city voting thereon at the (special) (general) election held on _____, 20 became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law hereto, designated as local law No. ___ of 20___ of the County of Westchester, State of New York, having been submitted to the electors at the General Elections of November_____, 20___, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of the said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript there from and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

Janusz R. Richards, Village Clerk
Village of Port Chester

Seal

Date: August 7, 2024