

March 19, 2024
Resolution # 1

WHEREAS, there has been presented to the Town Board on the 19th of March 2024, 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 ensure the health, safety and welfare of the public;

WHEREAS, the Town Clerk has placed a Public Notice in the newspaper circulated locally which indicates the nature of proposed Ordinance No. 68-457; and

WHEREAS, on February 9, 2024, pursuant to N.Y. General Municipal Law Section 239-m, the Town of Islip referred proposed Ordinance No. 68-457 to the Suffolk County Planning Commission for their review and decision;

WHEREAS, on February 13, 2024, a public hearing was held and the Town Board reserved decision pending the Suffolk County Planning Commission’s decision;

WHEREAS, on March 6, 2024, the Suffolk County Planning Commission approved proposed Ordinance No. 68-457;

NOW, THEREFORE, on motion of Councilperson Michael McElwee, Jr., seconded by Councilperson Jorge Guadron, be it

RESOLVED, the Town Board hereby adopts Ordinance No. 68-457 of 2024 declaring a six-month moratorium on the issuance and further processing of permits and approvals for Battery Energy Storage Systems pursuant to Section 68-456 of the Islip Town Code in the Town of Islip as follows:

SEE ATTACHED
Additions are indicated by UNDERLINING

Deletions are indicated by ~~STRIKED~~

Upon a vote being taken the result was: 4-1 Councilman James P. O'Connor

§ 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 impose a six-month moratorium on the issuance of permits and/or approvals for Battery Energy Storage Systems. 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. There have been no notable findings or recommendations published by this group as of the adoption of this ordinance.

Therefore, 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 limited moratorium 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.

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) months following the effective date of this ordinance. Following the moratorium period, this ordinance shall be without further force and effect unless the moratorium period is extended by a Town Board resolution. Notwithstanding the foregoing, the moratorium period shall not exceed eighteen (18) months.

F. Exclusions.

None.

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.