

## LOCAL LAW NO. 1 OF 2020

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

BE IT ENACTED, by the Town Board of the Town of Rush, Monroe County, State of New York, as follows:

#### **Section 1. TITLE**

This Local Law shall be known as the “Moratorium on and Prohibition of Large Scale Battery Energy Storage System Installations within the Town of Rush.”

#### **Section 2. 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 Rush 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), (10); Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law § 10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law § 10(4)(a), and (b); Statute of Local Governments §10(1), (6), and (7); Town Law § 64 (17-a); Town Law § 130(3) and (15); Town Law §135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law §3-0301(1)(b), 3-0301(2) (m) and 8-0113 and 6 NYCRR Part 617, also known as the State Environmental Quality Review Act, as it pertains to applications that are neither excluded nor exempt from this local law.

This Local Law is a land use regulation. This Local Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive “incidental control” of a zoning law and land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as potential negative impacts of such uses on a community.

This Local Law expressly supersedes any provisions of the Town Code of the Town of Rush, and sections 267, 267-a, 267-b, 267-c, 274-a, 274-b and 276 of the Town Law of the State of New York. This Local Law shall supersede and suspend those provisions of the Town Code of the Town of Rush and New York state law which require the Town Building Department, Town Code Enforcement Officer and/or the Town Planning Board to accept, process, and approve land use applications within certain statutory time periods.

This Local Law is intended to temporarily prohibit the creation or siting of large scale battery energy storage system installations (as herein later defined) within the Town of Rush for a period of up to twelve (12) months, pending the development and adoption of local 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 has formally requested the Deputy Supervisor form a citizens committee to identify and review local laws from other jurisdictions, and related information and source materials, in order to assist in developing the parameters of a local law to regulate large scale battery energy storage system installations. The Town Board has directed the Attorney for the Town to assist in this endeavor.

The Town Board also recognizes the need to review and examine its existing ordinances, local laws and Zoning Law 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 Rush shall work to prepare and eventually adopt new land use regulations to incorporate into the existing Zoning Law of the Town of Rush.

At this time, there are no pending applications for the location, development or site plan approval of a 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 environmental impacts that may be associated with such use. At present, the Zoning Law of the Town of Rush may not adequately regulate such land use. If the community allows such development during that 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 Zoning Law of the Town of Rush, thus protecting and furthering the public interest, health and safety.

### **Section 3. DEFINITIONS**

For purposes of this Local Law, the following terms shall have the meanings respectively set forth below:

**Large Scale Battery Energy Storage System Installation(s)** — Any installation of rechargeable energy storage system having an aggregate energy capacity of 600kWh or more, consisting of electrochemical storage batteries or similar technology, battery chargers, controls, power conditioning 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 uninterruptable 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 600kWh shall not be considered a “Large Scale Battery Energy Storage System Installation” for purposes of this Moratorium.

#### **Section 4. TEMPORARY MORATORIUM AND PROHIBITION**

A. Unless permitted pursuant to Section 5 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, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, overlay district 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 Rush, for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town of Rush, for any Large Scale Battery Energy Storage System Installation.

B. Unless permitted pursuant to Section 5 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 Rush for any Large Scale Battery Energy Storage System Installation.

C. The prohibitions set forth above in Section 4(A) and 4(B) 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 uninterruptable 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 or Town operation, so long as such use does not have an aggregate energy capacity of 600kWh.

D. This moratorium and prohibition shall be in effect beginning 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 Rush, and all land use applications for the siting or creation of Large Scale Battery Energy Storage System Installation within the Town of Rush.

F. Under no circumstances shall the failure of the Town Board of the Town of Rush, the Zoning Board of Appeals of the Town of Rush, the Planning Board of the Town of Rush, or the Code Enforcement Officer for the Town of Rush to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or any other Town-level approval related to a 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 5. HARDSHIP VARIANCE RELIEF FROM APPLICABILITY OF MORATORIUM**

Applications for land use otherwise subject to this moratorium may be exempted from the

provisions of this Local Law following a noticed public hearing before the Town Board. It is specifically intended that this moratorium shall supersede New York State law which would otherwise confer exclusive variance the zoning board of appeals.

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:

- A. The proximity of applicant's premises or the subject of applicant's request for relief to natural resources, including but not limited to prime agricultural soils, wetland areas, conservation districts and other areas of environmental concern.
- B. The impact of the proposed application on the applicant's premises and upon the surrounding area.
- C. 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 upon aesthetic resources of the community.
- D. Compatibility of the proposed application with the recommendations of any administrative body charged with such review by the Town of Rush.
- E. The written opinion of the Town of Rush Planning Board and the Town of Rush Code Enforcement Officer that such application may be jeopardized or made impractical by waiting until the moratorium is expired.
- F. Evidence specifying in detail the nature and level of any alleged hardship imposed on the property owner(s) as a result of this moratorium.
- G. Such other considerations and issues as may be raised by the Town Board.

In making a determination concerning a proposed exemption or grant of relief from application of the moratorium, the Town Board may obtain and consider reports and information from any source it deems to be helpful with review of said application. A grant of relief from application of the moratorium shall include a determination of unreasonable hardship upon the property owner (or if there are multiple property owners, a determination that each such owner shall suffer an unreasonable hardship) which is 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 of an exemption will be in harmony with, and will be consistent with the existing Town of Rush Zoning Ordinance and the recommendations of the Comprehensive Plan as such may exist.

An application for relief from the prohibitions of the moratorium shall be accompanied by a fee of \$500, together with the an escrow agreement pursuant to Chapter 100, Article VI, of the Town Code of the Town of Rush, 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 but not limited to any fees incurred by the Town for services provided by the Attorney for the Town.

## **Section 6. PENALTIES**

A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500) or imprisonment for not more than 10 days, or both for the first offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

B. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board.

C. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the propert(ies) within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

## **Section 7. CONFLICTS**

For and during the stated term of this legislation, unless the stated term thereof shall be modified or abridge by the Town Board, this moratorium shall take precedence over and shall control over any contradictory local law, ordinance, regulation or Zoning Ordinance provision.

## **Section 8. STATE ENVIRONMENTAL QUALITY REVIEW ACT**

The Town Board hereby determines that the adoption of this Local Law is a Type II action under 6 NYCRR 617.5(c)(36) and that environmental review under the State Environmental Quality Review Act is not required.

## **Section 9. SEVERABILITY**

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or

unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed here from, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is or declared invalid or unenforceable.

**Section 10. EFFECTIVE DATE**

The effective date of this Local Law shall be immediately upon its filing with the Secretary of State.