

**TOWN OF DAY
COUNTY OF SARATOGA, STATE OF NEW YORK
Local Law No. 01 of 2025**

**A LOCAL LAW IMPOSING A MORATORIUM
ON LOCATING BATTERY ENERGY STORAGE SYSTEMS
IN THE TOWN OF DAY**

Be it enacted by the Town Board of the Town of Day (“Town”), County of Saratoga, State of New York (“State”) as follows:

Section 1. Legislative Intent.

The purpose of this local law is to protect the public health, safety and welfare by restricting the development of battery energy storage systems within the Town of Day for a limited period of time in order to further develop and revise the applicable local laws specific to the development of battery energy storage systems.

Section 2. Findings.

The State of New York has, as a matter of public policy, undertaken a policy to encourage the development of facilities for the generation of renewable energy and energy storage facilities. As a result, there has been a sudden increase in developmental pressures within the Town of Day with respect to development of renewable energy generating facilities and battery energy storage facilities. The Town Board is therefore concerned that the current Zoning Law of the Town of Day, (the “Zoning Law”) and the existing site plan review considerations detailed therein may not be adequate for the review of the impacts and mitigation of the consequences of such uses and the approval thereof.

Additionally, the State of New York and the Town of Day have identified fire and safety risks associated with battery energy storage systems. In 2023, there were fires located at battery energy storage system facilities in the counties of Jefferson, Orange and Suffolk. The Town Board is desirous of implementing a moratorium in order to obtain additional information and assurances about the safety of these types of facilities, including, but not limited to, ensuring the technology and availability of equipment necessary for local fire districts to be able to suppress or appropriately respond to a fire should one occur, taking necessary precautions related to air emissions and deterring any necessary fire suppression chemicals from impacting surface and groundwater, and creating standards for siting these facilities.

Therefore, it is necessary and appropriate to implement a temporary and limited moratorium with respect to the development of battery energy storage systems in the Town of Day. Doing so shall preserve the status quo while the Town Board completes an evaluation and formulates revisions to the Code of the Town of Day, the potential enactment of other local laws, and to provide for an effective process to regulate, review, and render determinations on applications for battery energy storage systems and developing policies and procedures in accordance therewith.

Section 3. Moratorium Imposed.

- A. **Battery Energy Storage Systems Temporarily Prohibited.** For a period of one (1) year following the date of adoption of this local law, no site plan applications or use variance applications shall be accepted, reviewed, or approved by the Planning Board, Zoning Board of Appeals, nor any permit(s) shall for such applications be issued by the Town of Day or Saratoga County with respect to battery energy storage systems, hereby defined as one or more devices, assembled together, capable of storing energy in order 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 includes those classified as either Tier 1 or Tier 2 Battery Energy Storage System differentiated as follows: (1) Tier 1 Battery Energy Storage Systems having an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology; and (2) Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area.
- B. **Evaluation and Revision of Existing Regulations.** During the period of the moratorium established by this local law, the Town Board shall endeavor to evaluate and adopt revisions to the Town's local law(s) to address the use and regulation of battery energy storage systems.

Section 4. Extension of Moratorium.

This moratorium may be extended for up to two (2) additional periods not exceeding six (6) months each by resolution of the Town Board upon a finding of necessity for such extension.

Section 5. Relief From Requirements.

The Town Board reserves to itself the right and sole discretion to vary or adapt the strict application of this local law in the case of unusual hardship or circumstances that would deprive a property owner of the reasonable use of lands affected by this local law. Accordingly, by duly adopted resolution, the Town Board may authorize the Planning Board to review and consider for approval or disapproval a site plan application, the review of which is otherwise precluded by this local law, or the Enforcement Officer to issue the requisite permits otherwise precluded by this local law, subject to the regular review process for such variance, special use, site plan, or building permit, under circumstances where:

- A. An application for a variance is filed, in writing, with the Town Clerk, together with a filing fee in the sum of \$250.00. The application shall specifically identify the land involved, recite the nature and scope of the proposed development, provide a narrative description and a sketch plan of the proposed development. The applicant shall further describe the following:
1. The reasons for which the variance is requested and the grounds upon which it is sought to be approved, including all facts and circumstances upon which hardship

is claimed.

2. The potential fire and safety risks associated with the proposed development, including, but not limited to: the location of the proposed development in relating to habitable structures and firefighting facilities, response time, sources of fire fighting water or chemicals; the management of fire fighting in the area of the proposed development relative to preventing brush and structure fires; the sufficiency of any plans for evacuation, air monitoring and testing and any other measures deemed necessary by the Town Board for addressing the concerns arising out of battery energy storage system fires; and the environmental significance, if any, of the applicant's parcel and surrounding parcels and the proposed development's impact on the environment.
- B. All costs incurred by the Town in connection with the consideration of the application for a variance are paid by the applicant, including but not limited to, all professional consulting fees such as attorneys, engineers, and planners.
 - C. The applicant demonstrates that this local law has resulted in unnecessary hardship in that: the applicant has been deprived of substantially all economic use or benefit from the property in question, which must be established by competent financial evidence; the alleged hardship is unique to the applicant's property and does not apply to a substantial portion of other properties in the areas of the Town to which this local law applies; and the variance, if granted, will not pose a present or future risk to the health, safety and welfare of the residents in the vicinity of the proposed development and the Town at large.
 - D. The Town Board may refer any applications for a variance hereunder to the Planning Board, any other Town board, committee or department, and/or its professional consultants for their advice and recommendations. Nevertheless, all decisions as to the granting or denying of such variances shall be made by the Town Board in its sole and absolute discretion after determining whether the requested variance is compatible with protection of the environment and any contemplated revisions to the Town's local law(s). No variance shall be granted unless the Town Board determines the requested variance is compatible therewith.
 - E. The Town Board shall conduct a public hearing on any request for a variance within forty-five (45) days after it determines that a complete application has been submitted to it. The Town Board shall render its determination upon any application for a variance within sixty-two (62) days after the conclusion of the public hearing.
 - F. The granting of a variance by the Town Board does not preclude or otherwise restrict the Planning Board's review and jurisdiction of the site plan application pursuant to the Zoning Law of the Town of Day.

Section 6. Conflict With Other Laws.

This local law is enacted pursuant to the provisions of the Town Law and the Municipal Home Rule Law and, during the time it is in effect, it specifically supersedes and shall take precedence over any contrary laws, ordinances and provisions, including but not limited to Article 16 of NYS Town Law or local laws of the Town of Day.

Section 7. Penalties for Offenses and Enforcement.

Any person who shall develop or erect or install improvements upon land in violation of this local law, or break ground for the purpose thereof, shall be guilty of a violation and subject to a fine not to exceed \$1,000.00 or six (6) months in jail, or both. Each week a violation continues shall be considered a separate and distinct violation. This local law shall be enforced by the Enforcement Officer of the Town of Day who is hereby granted authority to issue appearance tickets for the purpose thereof. Upon authorization by the Town Board, this local law may also be enforced by civil action brought in the name of the Town for the purpose of obtaining injunctive relief and recovering civil penalties of \$950.00 for each week a violation of the local law continues.

Section 8. Effect of Invalidity.

If any clause, sentence, phrase, paragraph or any part of this local law shall for any reason be adjusted finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or any part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this local law would have been adopted had any such provisions not been included.

Section 9. Effective Date.

This local law shall take effect immediately upon adoption.