

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN, that the Town Board of the Town of Carmel will conduct a Public Hearing at Town Hall, 60 McAlpin Avenue, Mahopac, New York 10541 on Wednesday, June 19, 2024 at 7:00 p.m. or as soon thereafter that evening as possible on a proposed Local Law establishing a six month moratorium prohibiting the review and approval of applications and permits for “battery energy storage system” in the Town of Carmel, as follows:

**TOWN OF CARMEL
PROPOSED LOCAL LAW #___ OF THE YEAR 2024
A LOCAL LAW ESTABLISHING A SIX MONTH MORATORIUM PROHIBITING
THE REVIEW AND APPROVAL OF APPLICATIONS AND PERMITS FOR
“BATTERY ENERGY STORAGE SYSTEM” IN THE TOWN OF CARMEL**

Be it enacted by the Town Board of the Town of Carmel, Putnam County, State of New York as follows:

SECTION 1: PURPOSE

The purpose of this local law is to protect the public health, safety and welfare of the residents of the Town of Carmel and to maintain the status quo by temporarily suspending the processing of land use approvals as provided herein and to further suspend the rights of land owners and their designees to obtain development approvals as identified below for a period of six months from the date of the adoption of this local law while the Town Board studies, analyzes and determines potential appropriate revisions and amendments to the Town Code regarding the propriety of Battery Energy Storage Systems (as defined below).

SECTION 2: DEFINITIONS

BATTERY ENERGY STORAGE SYSTEM:

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 is classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:

(1) Tier 1 Battery Energy Storage Systems have 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.

(2) Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one (1) storage battery technology in a room or enclosed area.

SECTION 3: LEGISLATIVE FINDINGS

The Town of Carmel is a rural, largely residential community, having a population of approximately 33,576 people according to the results of the 2020 census.

The three hamlets in Carmel – Carmel, Mahopac, and Mahopac Falls (Red Mills), have been the historic centers of the Town since its founding.

The Town of Carmel is home to a number of lakefront residential communities that surround the many small and large lakes and reservoirs within the Town.

The Town's geography, like much of the Hudson Highlands region within which it is situated, consists of a series of hills and valleys. The road names in Carmel are evidence of the Town's geography – Seminary Hill, Cherry Hill, Weber Hill, Shear Hill, Barrett Hill, Hitchcock Hill roads – lots are carved into the hillsides and valleys, many providing attractive vistas to the Town's lakes and reservoirs. Within the valleys, remnant farmsteads still exist.

The Town of Carmel is actively engaged in the revision of its comprehensive plan and zoning code, in order to address issues of growth and development on a community-wide basis.

One specific area of concern and inquiry is Battery Energy Storage Systems within the Town. The Town has significant safety concerns, especially following fire incidents at facilities across the state. The Town intends to study the safety and security of these energy storage systems, including thermal runaway, off gassing and toxicity, stranded energy, ways to prevent fires, prevent by-product contamination, and ensure emergency responders have the necessary training and information to prepare and deploy resources in the event of a fire. Relatedly, the Town intends to study which areas in Town may be appropriate for such systems.

In short, the Town is very concerned with the detrimental effects of Battery Energy Storage Systems on the health, safety, welfare and quality of life of the residents and citizens of the Town of Carmel. Thus, the Town Board has decided to review the Town Code and consider potential revisions thereto in order to address the Town's concerns with Battery Energy Storage Systems.

In order to allow the Town Board time to complete its review, draft proposed new legislation and enact any such legislation, the Town Board deems it in the best interest of the general health, safety and welfare of the residents of the Town of Carmel to impose a moratorium prohibiting the review and approval of applications and permits for Battery Energy Storage System in the Town of Carmel.

SECTION 4: MORATORIUM

Pursuant to the statutory authority vested in the Town to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Carmel hereby declares a six-month moratorium on the review and approval of new as of yet unfiled and all pending applications for any and all land use approvals, including site plan approvals, subdivision plats, building permits, special use permits and variances (hereinafter "Land Use Approvals") for all Battery Energy Storage Systems within the Town. During the period of this local law:

- The Planning Board shall not accept any application, grant any approval to, or continue the review of a subdivision plat, site plan, special use permit or other permit that includes the permitting, construction and/or development of a Battery Energy Storage System within the Town.
- The Zoning Board of Appeals shall not accept any application or grant any approval for a variance or other permit that would have as a result the permitting, construction and development of a Battery Energy Storage System within the Town.
- The Building Department shall not accept any building permit application or grant any Certificate of Occupancy or Certificate of Compliance for a Battery Energy Storage System within the Town.
- Projects currently under construction and projects that have received final approvals are not subject to this moratorium.

SECTION 5: TERM

The moratorium imposed by this Local Law shall be effective six months from the effective date of this Local Law.

SECTION 6: HARDSHIP WAIVER

- A. Should any owner of property affected by this Local Law suffer any unnecessary and extraordinary hardship due to the enactment and application of this Local Law, then the owner of said property may apply to the Town Board of the Town of Carmel in writing for a variance from strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary or extraordinary hardship shall not be:
 - a. the mere concern that regulations may be changed or adopted, or that the Plan may be amended; or
 - b. the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law.
- B. An application for an exception based upon unnecessary or extraordinary hardship shall be filed with the Town Clerk no earlier than the effective date of this Local Law, including a fee of one thousand and five hundred 00/100 Dollars (\$1,500.00) for each tax map parcel claimed to be subject to unnecessary or extraordinary hardship, by the landowner or the applicant upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of unnecessary or extraordinary hardship and shall contain such other information and/or documentation as the Town Board, shall prescribe as necessary for the Town Board to be fully informed with respect to the application.
- C. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a hardship waiver from the provisions of this Local Law, the Town Board shall, within forty-five (45) days of receipt of a completed application, schedule a Public Hearing on said application upon five (5) days' written notice in the official newspaper of the Town of Carmel. At said Public

Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within thirty (30) days of the close of said Public Hearing, render its decision either granting, denying, granting in part or denying in part, the application for a hardship waiver from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary or extraordinary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall vary the application to this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

- D. Standard of Review. In reviewing an application for an exception based upon a claim of necessary or extraordinary hardship, the Town Board shall consider the following criteria:
- a. The extent to which the proposed development activity would cause significant environmental harm, adversely impact surrounding natural resource areas, public health, comfort or safety concerns and/or have a negative impact upon the Town.
 - b. Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.

SECTION 7: HOME RULE

Nothing in this Local Law is intended or shall be construed to limit the home rule authority of the Town under State Law or to limit the Town's discretion in setting fees and charges in connection with any applications requiring Town approval.

SECTION 8: SEVERABILITY

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Carmel hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

SECTION 9: REPEAL

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed to the extent of such inconsistency.

SECTION 10: SEQRA

This local law constitutes a Type II Action under the State Environmental Quality Review Act inasmuch as it constitutes the adoption of a moratorium on land development or construction. As such this project is not subject to review under the State Environmental Quality Act.

SECTION 11: EFFECTIVE DATE

This Local Law shall take effect immediately upon filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

At said Public Hearing, all interested persons shall be heard on the subject thereof. The Town Board will make every effort to assure that the Public Hearing is accessible to persons with disabilities. Anyone requiring special assistance and/or reasonable accommodations should contact the Town Clerk.

By Order of the Town Board
of the Town of Carmel
Alice Daly, Town Clerk

