

**TOWN OF EDEN
TOWN OF EDEN TOWN BOARD**

**A LOCAL LAW ESTABLISHING A SIX (6) MONTH MORATORIUM PROHIBITING
THE REVIEW AND APPROVAL OF
APPLICATIONS AND ISSUANCE OF PERMITS FOR
“BATTERY ENERGY STORAGE SYSTEMS”
IN THE TOWN OF EDEN**

LOCAL LAW NO. ____-2025

Be it enacted by the Town Board of the Town of Eden, Erie 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 Eden 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 landowners and their designees to obtain development approvals as identified below for a period of six (6) 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:

A rechargeable energy storage system consisting of one or more devices, including batteries, battery chargers, controls, power conditioning systems and associated electrical equipment, assembled together, capable of storing energy in order to provide electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle.

Section 3: Legislative findings.

This ordinance is adopted to impose a six-month moratorium on the issuance of permits and/or approvals for Battery Energy Storage Systems, which includes, but is not limited to, building-mounted and ground-mounted Battery Energy Storage Systems as well as the construction of dedicated-use buildings built for the primary intention of housing Battery Energy Storage Systems. The Town of Eden recognizes that Battery Energy Storage Systems 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 Battery Energy Storage Systems facilities in the State of New York beginning in May 2023.

In response to these Battery Energy Storage Systems 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 Battery Energy Storage Systems across New York. On February 6, 2024, Governor Hochul released initial recommendations from the Inter-Agency Fire Safety Working Group, outlining enhanced safety standards for battery energy storage systems. The draft recommendations include potential updates to the Fire Code of New York State as well as a list of additional opportunities for defining and implementing best practices. If adopted, the changes will codify enhanced safety standards and continue to position New York as a national leader in responsible and reliable battery energy storage development.

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 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 of Battery Energy Storage Systems. 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.

In addition, the Town is concerned about locating of Battery Energy Storage Systems in proximity to residential properties and in other areas where fires from such facilities could result in substantial harm and damage to property and residents in the Town of Boston. The Town is also concerned about other adverse environmental impacts that may result from locating Battery Energy Storage Systems on or in proximity to environmentally sensitive areas and with respect to adjacent properties.

In short, the Town is concerned about the detrimental effects Battery Energy Storage Systems on the health, safety, welfare and quality of life of the residents and citizens of the Town of Eden. Given these concerns and the current lack of relevant data and information on with respect to these issues, it is necessary for the Town Board to enact a six (6) month limited moratorium prohibiting the review and approval of applications and issuance permits for Battery Energy Storage Systems in the Town of Eden while these issues are further considered, and the Town Code is adequately revised to address any outstanding concerns.

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 Eden hereby declares a six (6) month moratorium on the review and approval of new as of yet unfiled and any 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:

1. 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.
2. 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.
3. 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.
4. 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 (6) months from the effective date of this Local Law or until the Town Board adopts a local law regulating Battery Energy Storage Systems land uses.

Section 6: Hardship waiver.

A. Should any owner of property in the Town of Eden 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 Eden 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 considered:

1. the mere concern that regulations may be changed or adopted, or that the Town Code may be amended; or
2. 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 Five Hundred and 00/100 (\$500.00) Dollars 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.

- C. 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.
- D. 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 Eden. 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.
- E. 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:
1. 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 applicable completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.
 2. 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.
 3. 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;
 4. The size of subject parcel and the wattage of the Battery Energy Storage System facility;
 5. The proximity of the applicant's proposed Battery Energy Storage System facility to residential areas as well as sensitive and high-risk populations including but not limited to hospitals, nursing homes, assisted living facilities, schools;
 6. The extent of the proposed development and/or disturbance of the applicant's premises;

7. The environmental significance, if any, of the applicant's parcel and the proposed development's impact upon the environment, including existing transportation resources;
8. Compatibility of the proposed development with the aesthetic resources of the community or with the existing community or neighborhood character; and
9. 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.

Section 7: Home rule and SEQRA.

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. The Town Board has considered the provisions of Article 8 of the Environmental Conservation Law ("SEQRA") and the regulations adopted thereunder at 6 NYCRR Part 617 and finds this Local Law to be a Type II Action as defined therein. Therefore, no further review is required under SEQRA.

Section 8: 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 any 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 or issue permits for the development of Battery Energy Storage Systems within specified statutory time periods.

Section 9: 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 Boston hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

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.