LOCAL LAW NO.: 6 - 2025

A LOCAL LAW REPEALING LOCAL LAW NO. 2 OF 2024, ENACTED APRIL 16, 2024, AS AMENDED, WHICH IMPOSED A MORATORIUM ON NEW SMOKE SHOP USES, AND ESTABLISHING A NEW ARTICLE XXIII OF THE DEWITT TOWN CODE ENTITLED "MORATORIUM ON BATTERY ENERGY STORAGE SYSTEMS" IMPOSING 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 DEWITT

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

Section 1: The Town of DeWitt Zoning Code being Local Law No. 6 of 2007, as has previously been amended, is hereby further amended to repeal Local Law No. 2 of 2024 in its entirety, as amended and codified in Article XXIII of Chapter 192 of the DeWitt Town Code, and establish a new Article XXIII of Chapter 192 of the DeWitt Town Code entitled "Moratorium on Battery Energy Storage Systems," as follows:

Article XXIII Moratorium on Battery Energy Storage Systems

§192-136 Intent.

Pursuant to the statutory powers vested in the Town Board of the Town of DeWitt (hereinafter "Town Board") to regulate and control land use and to protect the health, safety and welfare of the Town's residents and occupants, it is the intent of the Town Board to impose a six (6) month moratorium on the issuance of permits and/or approvals for Battery Energy Storage Systems (hereinafter "BESS") in the Town of DeWitt.

§192-137 Legislative Purpose.

The Town of DeWitt recognizes that 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 public concern in regard to the potentially volatile nature of lithium-ion batteries, stemming from fires at three different BESS facilities in the State of New York beginning in May of 2023. The Town Board, Planning Board, and Zoning Board of Appeals of the Town of DeWitt need additional information and assurances about the safety of BESS, 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 BESS.

The Town of DeWitt is specifically concerned about the implementation of BESS in proximity to areas where fires from such facilities could result in substantial harm and damage to property and residents in the Town, and about the adverse environmental impacts that may result from implementing BESS on or in proximity to environmentally sensitive areas and with respect to adjacent properties. The Town intends to study the safety and security of BESS, 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 short, the Town of DeWitt is concerned about the detrimental effects of BESS on the health, safety, welfare and quality of life of its residents and citizens. Given these concerns and the current lack of relevant data and information with respect to these issues, it is appropriate and necessary for the Town Board to enact a six (6) month moratorium prohibiting the review and approval of applications and issuance of permits for BESS in the Town while these issues are further considered. It is imperative that the establishment of BESS is halted during the term of the moratorium and the establishment of any regulations, rules, laws and/or controls deemed necessary for the safe and orderly development of the Town and protection of the Town's residents and citizens. A moratorium is appropriate and necessary in order to preserve the status quo until new regulations, rules, laws and/or controls are adopted by the Town Board. During the moratorium, the Town may implement such regulations, laws and/or controls as may be deemed necessary to protect the community and further the goals of the Town of DeWitt Comprehensive Plan.

§192-138 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.

§192-139 Moratorium.

A. During the Term of the Moratorium:

    1. The Town of DeWitt Planning and Zoning Department (hereinafter "Planning and Zoning Department") shall not accept or review any application that includes the permitting, construction and/or development of a Battery Energy Storage System within the Town of DeWitt.

    2. The Town of DeWitt Planning Board shall not accept or review any application, grant any approval to, or continue the review of a subdivision plat, site plan, special use permit, specific use permit or other permit that would have as a result the permitting, construction and/or development of a Battery Energy Storage System within the Town of DeWitt.

    3. The Town of DeWitt Zoning Board of Appeals shall not accept any application, grant any approval to, or continue the review of a variance, special use permit, specific use permit or other permit that would have as a result the permitting, construction and development of a Battery Energy Storage System within the Town of DeWitt.

    4. No applications for construction or development affected by this Moratorium or for approval for a site plan, variance, special use permit, specific use permit or any other permit shall be considered by any Board, Department, officer or agency of the Town of DeWitt.

B. The Town Board reserves the right to direct a Codes Enforcement Officer to revoke or rescind any building permit(s), certificate(s) of occupancy or any other permits or certificates issued in violation of this Local Law.

C. Under no circumstance shall the failure of any Board, Department, officer or agency of the Town of DeWitt to take action upon any application for any approval(s) constitute approval by default or approval by virtue of expiration of time to respond to such application.

§192-140 Exceptions.

A. The Moratorium imposed by this Local Law shall not apply to small-scale residential BESS with a capacity of 80 kWh or less located in a residential zoning district of the Town of DeWitt.

B. Applicants for small-scale residential BESS with a capacity of 80 kWh or less shall be required to obtain a development permit from the Town of DeWitt Planning and Zoning Department and formal inspection from Town of DeWitt Codes Enforcement Office upon installation.

C. The rules and regulations of the New York State Model Law for Battery Energy Storage Systems shall be used as a guide by the Town of DeWitt Planning and Zoning Department for the purposes of permitting, inspection, and implementation of small-scale residential BESS during the term of this Moratorium.

§192-141 Term.

The Moratorium imposed by this Local Law shall be in effect for a period of one hundred eighty (180) days from the effective date of this Local Law. This Moratorium may be extended for an additional period of not more than one hundred eighty (180) days by resolution of the Town Board of the Town of DeWitt.

§192-142 Penalties.

Any individual, partnership, firm or corporation that shall establish, construct, reconstruct, relocate, enlarge or modify any site to be used for implementation and/or use of Battery Energy Storage Systems in the Town of DeWitt in violation of the provisions of this Local Law, shall be subject to the follows:

A. A fine not to exceed one thousand dollars ($1,000.00). Each day a violation continues shall be deemed as a new and separate violation; and

B. A civil action inclusive of injunctive relief in favor of the Town to cease any and all actions which conflict with this Local Law and, if necessary, to remove any construction(s), improvement(s), or related items or byproducts which may have taken place in violation of this Local Law.

§192-143 Enforcement.

This Local Law shall be enforced by the Town of DeWitt Codes Enforcement Office or any other zoning enforcement individual(s) as designated by the Town Board. It shall be the duty of the enforcement individual(s) to advise the Town Board of all matters pertaining to the enforcement of this Local Law.

§192-144 Hardship.

A. The Town Board reserves the power and right to vary or adapt the strict application of the requirements of this Local Law in case of unusual or unnecessary hardship depriving an owner of property affected by this Local Law of all reasonable use of the lands involved.

B. Should any owner of property affected by this Local Law suffer an unusual or unnecessary hardship by way of carrying out the strict letter of this Local Law, the owner of said property may apply to the Town Board in writing for a variation from the strict compliance with this Local Law upon submission of proof of such unusual or unnecessary hardship.

C. For the purposes of this Local Law, unusual or unnecessary hardship shall not be mere delay in being permitted to make an application for approval(s) or waiting for a decision on an application for a

building permit, variance, special use permit, specific use permit, site plan review or any other permit during the term of this Moratorium.

D. Procedure. Upon submission of written application to the Town Clerk by the property owner seeking a variation from the strict application of this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a Public Hearing upon five (5) days written notice in an official newspaper of the Town. At the Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have the opportunity to be heard, and the Town Board shall, within thirty (30) days of the Public Hearing, render its decision either granting or denying the application for a variation from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer unusual or unnecessary hardship by the strict application of this Local Law to a particular property, the Town Board may vary the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance of this Local Law.

§192-145 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, New York State Town Law, §§261 through 263, and the Municipal Home Rule Law of the State of New York, §10. In particular, this Local Law shall supersede any provisions of the Town Code and New York State Law which require the Town Board, Planning Board, Zoning Board of Appeals, or any other Board or officer or agency of the Town of DeWitt to accept, process and/or approve applications or issue permits for the development of Battery Energy Storage Systems within specific statutory time periods.

§192-146 Validity and severability.

If any section or part of this Local Law is declared invalid or unconstitutional, it shall not be held to invalidate or impair the validity, force or effect of any other section of this Local Law.

Section 2: Local Law No. 6 of 2007 and as amended, remains in full force and effect except as hereinabove amended.

Section 3: This Local Law shall take effect immediately upon posting and publication as required by law and filing with the Secretary of State.