

MAYOR
J. Michael Cindrich

DEPUTY MAYOR
Theresa Flora

VILLAGE TRUSTEES
Lisa C. Abzun
Angie Guerra
Karen B. Schleimer



VILLAGE MANAGER
Edward W. Brancati

**ASSISTANT
VILLAGE MANAGER**
Kenneth L. Famulare

VILLAGE/TOWN OF MOUNT KISCO

WESTCHESTER COUNTY, NEW YORK

104 Main Street, Mount Kisco, NY 10549-0150
Tel (914) 241-0500 • Fax (914) 241-9018
www.mountkisco.ny.gov

August 20, 2024

Ms. Sunday Vanderberg
Clerk & Chief Administrative Officer
Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue, 8th Floor
White Plains, NY 10601

Dear Ms. Vanderberg,

In accordance with Section 7-706 of Village Law of the State of New York, the Village/Town of Mount Kisco is hereby providing written notice of a proposed moratorium for Battery Energy Storage Systems (BESS) facilities. The boundaries of this moratorium are within Westchester County. As a result, the Village is required to serve notice to you as Clerk of the Westchester County Board of Legislators, and shall have the opportunity to be heard at the public hearing or submit written comment.

Enclosed please find notice of the public hearing that has been scheduled for Wednesday, September 4, 2024 at 7:00 p.m. or as soon thereafter as possible, and a copy of the proposed local law. If you have any questions, please do not hesitate to contact me by email, ebrancati@mountkisco.ny.gov or by phone at (914) 864-0001.

Sincerely,

Edward W. Brancati
Village Manager



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VILLAGE/TOWN OF MOUNT KISCO

PUBLIC NOTICE

Please take notice that the Board of Trustees of the Village/Town of Mount Kisco has scheduled a public hearing on **Wednesday, September 4, 2024 at 7:00 pm** or as soon thereafter as possible, in the Frank J. DiMicco Board Room in Village Hall, located at 104 Main Street, Mount Kisco, New York, to discuss a proposed Local Law to enact a moratorium on Battery Energy Storage Systems.

By Order of Mayor J. Michael Cindrich and the Board of Trustees
Edward W. Brancati, Village Manager

Proposed Local Law № 5 of 2024

**A LOCAL LAW TO
IMPOSE A MORATORIUM ON
BATTERY ENERGY STORAGE
SYSTEM FACILITIES**

BE IT ENACTED by the Board of Trustees of the Village/Town of Mount Kisco, New York, as follows:

§ 1. SHORT TITLE.

This Local Law shall be known and cited as the “Battery Energy Storage System Facilities Moratorium Law of the Village/Town of Mount Kisco of 2024.”

§ 2. PURPOSE, INTENT AND FINDINGS.

The Board of Trustees of the Village/Town of Mount Kisco (the "Village Board") is concerned with the impact of battery energy storage systems ("BESS") on, among other things, surrounding properties, neighborhoods, the environment, and public health and safety. Understanding the impacts of BESS and implementing appropriate regulations for the installation and use of BESS that mitigate or avoid negative impacts is necessary to protect public health, safety, and quality of life in the Village/Town of Mount Kisco (the "Village"). The Village Board desires that Village staff and consultants conduct a study of BESS for this purpose.

Thus, the Village Board finds that a moratorium is specifically determined to be necessary (i) to provide adequate time for the Village to conduct an appropriate study of BESS, (ii) to prepare recommendations related to BESS, including additions or amendments to the Village's Zoning Law, (3) for the Village Board and other involved boards and agencies, and the public to fully and carefully consider these recommendations, and (iv) if applicable, for the Village Board to enact these recommendations. Notably, the Mount Kisco Village Code does not currently provide for the regulation of BESS.

Additionally, the Village Board is aware of the rights of property owners to utilize their properties in accordance with existing laws and is sensitive to the protection of these rights.

§ 3. MORATORIUM

In order to enact appropriate legislation to address the concerns set forth herein, the Village shall establish a committee to provide the Village Board with a comprehensive plan as to how to appropriately regulate BESS including a plan as to where, within the Village BESS may be permitted, and whether limiting the number of such facilities to insure that businesses of this nature can operate, with a minimum of detrimental cumulative impacts to the community. The Village Board has found further that unless reasonable measures are taken for an interim period to protect

the public interest pending the completion of the necessary studies, meetings, and required public hearings, BESS may occur within the Village which would frustrate the plan that the Village Board may wish to enact. In light of the fact that the characteristics of BESS may have a detrimental impact on the community if not reasonably regulated, including regulating the locations where BESS may operate, and regulating the size and physical characteristics of BESS at permitted locations, the Village Board has determined that a thorough examination of these issues, including zoning regulations with respect to BESS, is necessary in order to protect the future health, safety, and welfare of present and future residents of the Village. This review will likely culminate in amendments to Chapter 110 "Zoning" and possibly other sections of the Village Code.

The Village requires time to accomplish the technical aspects of its review and to enact any required amendments. Since it would be improper for development to proceed in a manner potentially contrary to Chapter 110 and other sections of the Village Code as they may ultimately be amended, a moratorium is necessary and appropriate to protect the health, safety and welfare of the present and future residents and property owners of the Village as well as the greater community and that same will be best served by implementing a moratorium on the development of BESS, for a short period of time to permit the Village Board, together with staff and consultants retained by the Village, including the Village Engineer, Village Attorney, and Building Inspector, to complete their review of BESS within the Village, and to act on the important recommendations of such persons. Accordingly, the Village Board hereby enacts a temporary, limited moratorium on BESS whereby no approval for, permitting, or including BESS shall be granted by the Village, including but not limited to any approval of a zone change, variance, subdivision, site plan, special use permit, building permit, demolition permit, or sign permit.

The Village Board finds that the necessary, temporary action proposed by this local law consisting of deliberative information collection as part of the continuing administration and management of the Village constitutes a Type II action under the New York State Environmental Quality Review Act and therefore requires no further environmental review.

§ 4. REGULATIONS.

A. Except as otherwise provided herein, effective on the effective date of this Local Law and continuing for a period of one hundred eighty (180) days after the effective date of this Local Law, unless the Village Board by resolution, establishes an earlier date, no building permit, special permit, preliminary or final site plan review, variance, certificate of occupancy, or other permit or approval relating to construction, alteration, modification, conversion, or change of use with respect to BESS may be issued, except in the event of an emergency as determined by the Building Inspector. Nor shall any application be accepted with respect to any property for which the use of same for a BESS is contemplated, nor shall any business begin to operate as a BESS during this moratorium period.

B. This moratorium may be extended by two (2) additional periods of up to ninety (90) days each by resolution of the Village Board of Trustees upon a finding of the necessity for such extension.

§ 5. APPEALS / APPLICATIONS FOR RELIEF.

A person or entity with standing may appeal to the Village Board for relief from the provisions of this moratorium upon a showing that such relief is necessary to avoid unnecessary financial hardship or a taking of private property beyond what is permissible by valid regulation . The Village Board shall have the power to , may grant appropriate relief from this Local Law subject to whatever conditions are deemed necessary to Protect the public. Applications for such relief shall be by verified petition to the Board of Trustees and shall be supported by competent financial evidence. The Board of Trustees shall hold a hearing on any such petition within thirty (30) days and decide such applications within fifteen (15) days after the closing of such hearing. The default of the Board of Trustees in acting on such application shall not result in a default granting of such relief but shall permit the applicant to seek such relief pursuant to Article 78 of the CPLR grant such relief or so much relief as determined by the Village Board to be necessary and appropriate. as it relates to this moratorium. The decision of the Village Board on any such application for relief shall be final.

§ 6. PENALTIES FOR OFFENSES.

Any person, firm, entity, or corporation that shall construct, erect, enlarge, convert or otherwise add to any building or structure in violation of the provisions of this Local Law shall be subject to penalties as otherwise provided by law or ordinance of the Village for such violation.

§ 7. SEVERABILITY.

If any section, subsection, clause, phrase or other portion of this ordinance is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, the portion of the ordinance declared to be invalid will be deemed a separate, distinct, and independent portion and the declaration will not affect the validity of the remaining portions hereof, which will continue in full force and effect.

The invalidity of any word, section, clause, paragraph, sentence part or provision of this Local Law shall not affect the validity of any part of this Local Law which shall be given effect without such invalid part or parts.

§ 8. REPEAL OF EXISTING LAWS.

All ordinances, local laws, or parts thereof in conflict with the provisions of this Local Law are hereby repealed to the extent necessary to give this Local Law full force and effect during the effective period including without limitation, Local Law 3 of 2024.

§ 9. EFFECTIVE DATE AND TERM.

The moratorium provided for by this ordinance shall be effective immediately, shall remain in effect for a period of one hundred eighty (180) days, and may be extended for two (2) additional periods of up to ninety (90) days each by resolution of the Village Board of Trustees upon a finding

that same are deemed necessary by the Village Board to complete the purpose and intent of the moratorium set forth herein.

This Local Law shall take effect immediately upon adoption and filing with the Secretary of State as provided by the Municipal Home Rule Law.

WESTCHESTER COUNTY
BOARD OF LEGISLATORS

2024 AUG 23 AM 11:49

RECEIVED