

Summary For Moratorium

On Battery Energy Storage System (BESS) project

To regulate and control land use and to protect the health, safety and welfare of the City's residents and occupants, it is the intent of the Common Council to impose a six-month moratorium on the issuance of permits and/or approvals for battery energy storage systems (hereinafter "BESS") in the City of Syracuse.

While BESS is a critical component in supporting the viability and promotion of renewable energy sources, it also represents a relatively new technology with potential and not yet fully understood impacts on surrounding neighborhoods, as well as a lack of comprehensive local regulatory standards. Accordingly, the City intends to implement a temporary, citywide pause on the development of BESS facilities.

The proposed moratorium will allow the City sufficient time to evaluate the safety and security implications of BESS, including but not limited to thermal runaway, off-gassing and toxicity, stranded energy, fire prevention measures, and the potential for contamination from by-products. The moratorium will also enable the City to ensure that emergency responders receive the necessary training and information to effectively prepare for and respond to BESS-related incidents, and to develop appropriate local ordinances governing future BESS applications.

The proposed moratorium will be presented to the Common Council for consideration and final legislative action.

ARTICLE XXIII
Moratorium on Battery Energy Storage Systems
[Added by L.L. No. 2-2024; amended by L.L. No.]

§ Intent.

Pursuant to the statutory powers vested in the Common Council of the City of Syracuse (hereinafter "Common Council") to regulate and control land use and to protect the health, safety and welfare of the City's residents and occupants, it is the intent of the Common Council to impose a six month moratorium on the issuance of permits and/or approvals for battery energy storage systems (hereinafter "BESS") in the City of Syracuse.

§ Legislative purpose.

- A. The City of Syracuse 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 Common Council, City Planning Commission, and Board of Zoning Appeals of the City of Syracuse 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.
- B. The city of Syracuse 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 City, 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 City 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.
- C. In short, the City of Syracuse 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 Common Council to enact a six-month moratorium prohibiting the review and approval of applications and issuance of permits for BESS in the City 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 City and protection of the City'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 Common Council. During the moratorium, the City may implement such regulations, laws and/or controls as may be deemed necessary to protect the community and further the goals of the City of Syracuse Comprehensive Plan.

§ 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.

§ Moratorium.

A. During the term of the moratorium:

- (1) Neither the City of Syracuse Central Permit Office nor the Office of Zoning Administration (hereinafter “Permitting and Zoning Administration”) shall accept or review any application that includes the review, zoning approval, permitting, construction and/or development of a battery energy storage system within the City of Syracuse.
- (2) The City of Syracuse City Planning Commission 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 City of Syracuse.
- (3) The City of Syracuse Zoning Board of Appeals shall not accept any application, grant any approval to, or continue the review of a variance, or any appeal of a decision that would have as a result the approval, permitting, or construction and development of a battery energy storage system within the City of Syracuse.
- (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 City of Syracuse.
- (5) No applications leading to construction or development affected by this moratorium including approval of special use permits or any other related approval vested with the Common Council shall be considered by the Common Council of the City of Syracuse.

B. The Mayor 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 article.

- C. Under no circumstance shall the failure of any board, department, officer or agency of the City of Syracuse 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.

§ Exceptions.

- A. The moratorium imposed by this article shall not apply to small-scale residential BESS with a capacity of 80 kWh or less located in a residential zoning district of the City of Syracuse.
- 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 City of Syracuse Permitting and Zoning Administration offices with formal inspection from the City of Syracuse Codes Enforcement Office and Permitting 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 City of Syracuse Zoning Administration for the purposes of permitting, inspection, and implementation of small-scale residential BESS during the term of this moratorium.

§ Term.

The moratorium imposed by this article shall be in effect for a period of 180 days from the effective date of this article. This moratorium may be extended for an additional period of not more than 180 days by ordinance of the Common Council of the City of Syracuse.

§ Penalties for offenses.

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 City of Syracuse in violation of the provisions of this article shall be subject to the following:

- A. A fine not to exceed \$1,000. Each day a violation continues shall be deemed as a new and separate violation; and
- B. A civil action brought by the City's Corporation Counsel inclusive of injunctive relief in favor of the City to cease any and all actions which conflict with this article and, if necessary, to remove any construction(s), improvement(s), or related items or by-products which may have taken place in violation of this article.

§ Enforcement.

This article shall be enforced by the City of Syracuse Codes Enforcement Office or any other zoning enforcement individual(s) as designated by the Common Council or the City's Corporation Counsel. It shall be the duty of the enforcement individual(s) to advise the Common Council and the Deputy Commissioner of Code Enforcement and Zoning Administration of all matters pertaining to the enforcement of this article.

§ Hardship.

- A. The Common Council reserves the power and right to vary or adapt the strict application of the requirements of this article in case of unusual or unnecessary hardship depriving an owner of property affected by this article of all reasonable use of the lands involved.
- B. During the duration of this moratorium, should any owner of property affected by this article suffer an unusual or unnecessary hardship by way of carrying out the strict letter of this article, the owner of said property may apply to Board of Zoning Appeals in writing for a variance from the strict compliance with this article upon submission of proof of such unusual or unnecessary hardship.
- C. For the purposes of this article, unusual or unnecessary hardship shall not be having purchased real property in anticipation of its use for BESS, or a 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 Office of Zoning Administration by the property owner seeking a variance from the strict application of this article, the Board of Zoning Appeals shall, within 30 days of receipt of said application, schedule a public hearing upon ten days' written notice in an official newspaper of the City. 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 Board of Zoning Appeals shall, within 30 days of the public hearing, render its decision either granting or denying the application for a variance from the strict requirements of this article based on the statutory use variance criteria. If the Board of Zoning Appeals determines that a property owner will suffer unusual or unnecessary hardship by the strict application of this article to a particular property, the Common Council may vary the application of this article to the minimum extent necessary to provide the property owner relief from strict compliance of this article.

§ Authority.

This moratorium is adopted pursuant to § 2(c)(6) and(10) of Article IX of the New York State Constitution; Subdivisions 1 and 7 of § 10 of the New York Statute of Local Governments; §§ 20, 20-f, and 27-a through 27-b of the New York State General City Law; and § 10 of the Municipal Home Rule Law of the State of New York. In particular, this article shall supersede any provisions of the Syracuse Code of Ordinances and New York State Law which require the Common Council, City Planning Commission, Board of Zoning Appeals, or any other board or officer or agency of the City of Syracuse to accept, process and/or approve applications or issue permits for the development of battery energy storage systems within specific statutory time periods.

§ Validity and severability.

If any section or part of this article 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 article.