

TOWN OF CONCORD TOWN BOARD MEETING      July 22, 2024  
9:30 a.m.

MEETING CALLED TO ORDER BY PHILIP DROZD, SUPERVISOR,  
at 9:30 a.m.

ROLL CALL:            PHILIP DROZD, SUPERVISOR  
                         CLYDE M. DRAKE, COUNCIL MEMBER  
                         KENNETH D. ZITTEL, COUNCIL MEMBER  
                         KIMBERLY S. KRZEMIEN, COUNCIL MEMBER

EXCUSED:    KENNETH KASSEL, COUNCIL MEMBER

ALSO PRESENT:    DARLENE G. SCHWEIKERT, Town Clerk

JAMES TARAVELLA

PETER SORGI

Supervisor Drozd opened the Special Town Board meeting at 9:30 a.m. to approve the Battery Energy Storage Systems Moratorium for one year and Solar Energy Systems Moratorium for one year.

ITEM #1      BATTERY ENERGY STORAGE SYSTEMS MORATORIUM

Council Member Krzemien, moved the adoption of Resolution 13,  
seconded by Supervisor Drozd:

Town of Concord  
Local Law No. 3 of the Year 2024

A local law enacting a temporary moratorium on all battery energy storage system facilities.

Be it enacted by the Town Board of the Town of Concord as follows:

SECTION I.  
SHORT TITLE

This local law shall be cited as Local Law No. 3 of 2024 of the Town of Concord and it is entitled the "2024 Temporary Moratorium Law on Battery Energy Storage System Facilities."

SECTION II.  
LEGISLATIVE FINDINGS

WHEREAS, communities are witnessing the introduction of a previously unfamiliar form of Green-adjacent technology in the form of Battery Energy Storage Systems, or "BESS"; and

WHEREAS, BESS facilities generally consist of rows of rechargeable batteries housed in self-contained, interconnected storage units. BESS facilities typically operate by drawing surplus energy from the local power grid during periods of low usage and storing it for later distribution back into the grid during peak demand; and

WHEREAS, the Town of Concord Town Board, Disaster Coordinator, and local Fire Companies have raised concerns regarding BESS facilities over the presence of highly flammable substances, such as from lithium-ion batteries, and possible air and groundwater contamination; and

WHEREAS, following the third fire at a battery energy storage facility in as many months in New York this summer, Gov. Kathy Hochul announced the creation of a state inter-agency working group tasked with ensuring the safety of battery energy storage systems across New York; and

WHEREAS, the Town Board finds it imperative that the town undertake a thorough examination of these systems to identify any possible threats to public health, safety and welfare as well as evaluate the potential for environmental degradation; and

WHEREAS, other potentially significant planning concerns associated with BESS facilities such as noise generated by cooling fans may affect the quality of life of our residents; and

WHEREAS, it is essential for the Town of Concord to enact a temporary moratorium to carefully evaluate the implications of BESS facilities and assess how they may impact the Town, its residents, and its fire prevention infrastructure; and

WHEREAS, the Town Board of the Town of Concord has determined that in accordance with Section 617.5(c)(30) SEAR the adoption of a moratorium on applications for building permits and/or certificate of occupancies for land development or construction of Battery Energy Storage System Facilities constitutes a Type II Action, and further that the proposed moratorium has been identified as an Action not having a significant impact on the environment and is not subject to review under SEQRA.

IT IS THEREFORE FOUND BY TOWN OF CONCORD TOWN BOARD that the Town of Concord shall implement a moratorium to allow for a comprehensive and deliberate examination of BESS facilities and the recently introduced state inter-agency working group, with the aim of preserving the Town's ability to address the unique needs and concerns of its community in the realm of battery energy storage system regulations.

### SECTION III. AUTHORITY

This moratorium is enacted by the Town Board of the Town of Concord pursuant to its authority to adopt local laws under Article IX of the New York State Constitution and Municipal Home Rule Law Section 10.

### SECTION IV. MORATORIUM

- A. For a period of one (1) year from the effective date of this Local Law, no applications shall be accepted or considered by the Planning Board or the Town Board of the Town of Concord for any battery energy storage system facilities, or stand-alone.
- B. This moratorium may be extended by one (1) additional period of up to one year by resolution of the Town Board upon a finding of the necessity for such extension.

### SECTION V. SEVERABILITY

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

SECTION VI.  
REPEAL OF OTHER LAWS

All local laws in conflict with provisions of this Local Law are hereby superseded and suspended for the duration of this moratorium and for any additional period that this Local Law is extended. This Local Law also supersedes, amends and takes precedence over any inconsistent provisions of New York State Town Law, the Town's Municipal Home Rule powers, pursuant to Municipal Home Rule Law Sections 10 and 22. The Town Law provisions intended to be superseded include all of the Article 16 of the Town Law, Sections 261-285 inclusive and any other provisions of law that the Town may supersede pursuant to the Municipal Home Rule Law and the Constitution of the State of New York. The courts are directed to take notice of this legislative intent and to apply such intent in the event the Town has failed to specify any provisions of law that may require supersession. The Town Board hereby declares that it would have enacted this local law and superseded such inconsistent provisions had it been apparent.

SECTION VII.  
EFFECTIVE DATE

This Local Law shall take effect immediately, as provided by law, upon filing with the New York State Secretary of State.

Voting as follows:

Council Member Drake	Aye
Council Member Kassel	Excused
Council Member Krzemien	Aye
Council Member Zittel	Abstained
Supervisor Drozd	Aye

The foregoing Resolution was thereupon declared duly adopted.

ITEM #2      SOLAR ENERGY MORATORIUM

Council Member Krzemien, moved the adoption of Resolution 14, seconded by Supervisor Drozd; with the changes recommended by Town Attorney Attea:

Town of Concord  
Local Law No. 4 of the Year 2024

A local law enacting a temporary moratorium on all battery energy storage system facilities.

BE IT ENACTED by the Town Board of the Town of Concord, Erie County, New York as follows:

SECTION 1.  
PURPOSE AND INTENT

The purpose of this Local Law is to protect the public health, safety and welfare of the residents of the Town of Concord and to maintain the status quo as to certain solar energy uses, as the present zoning regulations in the Town do not adequately address this type of use. The moratorium will stop the processing of applications for, and the issuance of any permits, certificates of occupancy and approvals for certain land uses relating to solar energy, including but not limited to solar farms. The moratorium is for a period of one year, allowing the Town Board to analyze and determine potential appropriate revisions and amendments to the Town of Concord Zoning Code concerning this use.

SECTION 2.  
LEGISLATIVE FINDINGS

The Town of Concord Town Board does hereby find that without a temporary halt on the processing, permitting, and approvals for certain solar land uses there is the potential that such uses could be located in unsuitable areas within the Town and/or on particular lots without adequate dimensional regulations in place. The potential for the unsuitable location of and lack of proper dimensional regulations for, such uses would have materially adverse and irreversible impacts on the Town.

The Town Board also finds that it is in need of time to perform the necessary analysis of the potential types of solar energy facilities that could be located in the Town. By maintaining the status quo regarding such uses the Town Board can provide for the planned orderly growth and development of the Town.

SECTION 3.  
MORATORIUM IMPOSED; APPLICABILITY

For a period of time of one year following the effective date of the adoption of this Local Law no application may be processed, and no permits, certificates of occupancy, approvals, denials, determinations or interpretations may be issued or granted for any land uses relating to solar energy, including but not limited to solar farms.

The term "land uses relating to solar energy" shall be broadly construed to include any facility designed to generate electric power to be marketed, sold or used for other than the power demands of the improvements on the property on which such facility is located. Not included within the scope of this moratorium are solar energy facilities designed to generate electric power solely for the use of the improvements located on the same property.

The term "solar farm" shall mean "a collection of solar panels covering one-quarter (1/4) acres or more of land that are designed to capture sunlight and transform it into electricity. This definition includes freestanding and ground pole-mounted photovoltaic and parabolic solar installations. This definition does not include photovoltaic panels that are mounted on or affixed to residential dwellings for their use, or municipal buildings, or existing panels mounted on commercial or industrial buildings.

This Local Law shall be binding on the Town Board, Planning Board, Zoning Board of Appeals, Building Inspector, all Town officials and employees, and any applicant or real property owner in the Town desiring to apply for or receive a permit, certificate of occupancy or approval in the Town of Concord. During the period of the moratorium, the Town Board shall endeavor to complete all reasonable and necessary review, study, analysis and, if warranted, revisions to the Town of Concord Code. During the period of the moratorium, no applications will be accepted, nor permits, certificates of occupancy or approvals issued, which would authorize development within the Town for land uses relating to solar energy as described above.

Notwithstanding anything contained herein to the contrary, the Local Law and Moratorium shall not apply to the continued review by the Town of Concord and other applicable government entities of solar energy projects that have been applied for and are under review including the issuance of any permits, certificates of occupancy, and approvals for any such solar energy projects that have been applied for and are under review by the Town of Concord and other applicable government entities as of the date of enactment.

SECTION 4.  
TERM

This moratorium shall be in effect for a period of one-year consecutive months from its effective date. This Local Law shall be subject to renewal for a cumulative period of up to an additional one year, if necessary, by Resolution(s) of the Town Board.

SECTION 5.  
EFFECT ON OTHER LAWS

To the extent that any law, ordinance, rule or regulation, or parts thereof, are in conflict with the provisions of this Local Law, including all provisions of Article 16 of the New York State Town Law concerning special use permit, site plan, building permit and certificate of occupancy procedure and requirements, this Local Law shall control and supersede such law ordinance, rule or regulation.

SECTION 6.  
WAIVER

Owing to the limited scope and duration of this moratorium, there is no provision being made in this Local Law for any waivers to its applicability. However, the Town Board may, but is not obligated to, promulgate regulations by a Resolution of the Board authorizing a hardship waiver process to this moratorium.

SECTION 7.  
SEVERABILITY

If any clause, sentence, paragraph, section or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall be confined in its operation to the clause, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered, and the remaining provisions shall remain in full force and effect.

SECTION 8.  
EFFECTIVE DATE

This Local Law shall take effect immediately upon its filing with the Secretary of State in accordance with New York Municipal Home Rule Law.

Voting as follows:

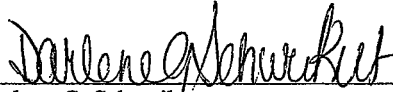
Council Member Drake	Aye
Council Member Kassel	Excused
Council Member Krzemien	Aye
Council Member Zittel	Abstained
Supervisor Drozd	Aye

The foregoing Resolution was thereupon declared duly adopted.

ITEM #3      MOTION TO ADJOURN

Supervisor Drozd reminded the Board that Public Hearing on the Joint Increase and Improvements at the WWTP is scheduled for Monday, July 29<sup>th</sup> at 9 a.m.

Motion by Council Member Zittel, seconded by Council Member Krzemien, and passed unanimously, to adjourn the meeting at 9:32 a.m. Council Members Drake, Zittel & Krzemien; Supervisor Drozd, voting aye; Council Member Kassel, excused. Carried.



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Darlene G. Schweikert  
Town Clerk

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