

**Town of Fenner
Town Board Meeting
October 11, 2023**

**SUPERVISOR JONES
COUNCILPERSON CODY Absent
COUNCILPERSON STRACK
COUNCILPERSON PUSHLAR
COUNCILPERSON WESTER
TOWN CLERK DOLAN**

**Residents: The Smith Family
P. Douglas
J. Carmen
A. Stone**

The regular meeting of the Fenner Town Board was called to order at 8:00pm by Supervisor Jones with the Pledge of Allegiance. A moment of silence was held for the troubles in Israel.

Councilperson Strack motioned to accept the September Town Board meeting minutes. Seconded by Councilperson Pushlar Approved by the Board.

Councilperson Wester motioned to accept the Town Clerk's Monthly Report as presented Seconded by Councilperson Strack Approved by the Board.

Councilperson Wester motioned to accept the Town Supervisor's Monthly Report as presented Seconded by Councilperson Pushlar Approved by the Board.

The Highway Superintendent report was presented and available for review at the town offices. Parking lot lines are still being vetting, Supervisor Jones will check with the County.

Motion to start public hearing was made by Councilperson Strack Seconded by Councilperson Wester at 8:06 PM.

PUBLIC COMMENT - All in favor of battery storage moratorium.

Motion to end public hearing was made by Councilperson Wester Seconded by Councilperson Pushlar at 8:09 PM

TOWN OF FENNER

TOWN BOARD RESOLUTION

2023 -30

October 11, 2023

TOWN OF FENNER LOCAL LAW NO. _2_ OF 2023

("A Local Law Imposing a Twelve (12) Month Moratorium
on Battery Energy Storage Systems Within the Town of Fenner")

The following resolution was offered by Councilor Pushlar who moved its adoption, seconded by Councilor Strack to wit:

WHEREAS, pursuant to the provisions of the Municipal Home Rule Law, a proposed local law titled Local Law No. 2-2023, "A Local Law Imposing a Twelve (12) Month Moratorium on Battery Energy Storage Systems Within Town of Fenner," was presented and introduced at a regular meeting of the Town Board of the Town of Fenner held on September 13, 2023; and

WHEREAS, a public hearing was held on such proposed local law on this 11th day of October, 2023, by the Town Board of the Town of Fenner and proof of publication of notice of such public hearing, as required by law, having been submitted and filed, and all persons desiring to be heard in connection with said proposed local law having been heard, and said proposed local law having been in the possession of the members of the Town Board of the Town of Fenner in its final form in the manner required by Section 20 of the Municipal Home Rule of the State of New York; and

WHEREAS, the enactment of Local Law No. __2-2023 has previously been determined to be Type II action under SEQR, thus concluding the environmental review process; and

WHEREAS, it is in the public interest to enact said Local Law No. 2__-2023.

NOW, THEREFORE, it is

RESOLVED, that the Town Board of the Town of Fenner, Madison County, New York, does hereby enact Local Law No. __2-2023 as Local Law No. ____2-2023 as follows:

“TOWN OF FENNER

LOCAL LAW NO. 2 OF 2023

**A Local Law Imposing a Twelve (12) Month Moratorium
on Battery Energy Storage Systems Within the Town of Fenner**

Be it enacted as follows:

Section 1: Intent

It is the intent of the Town Board of the Town of Fenner to impose a twelve (12) month moratorium on the siting, establishment, placement, installation, construction, erection, modification and enlargement of battery energy storage systems within the Town of Fenner. This local law is enacted under the authority of Section 10 of the New York Municipal Home Rule Law.

Section 2: Legislative Purpose

The purpose of this local law is to temporarily halt development of battery energy storage systems, for a period of up to twelve (12) months, while the Town considers zoning changes and the enactment of zoning measures to specifically address the matters of community concern.

The Town Board recognizes and acknowledges that the Town needs to study and analyze many considerations that affect the preparation of local legislation to regulate battery energy storage systems. In the coming months, the Town will be diligently working towards the development of regulations that will address, in a careful manner, the establishment, placement, construction, enlargement and erection of battery energy storage systems on a Town-wide basis and to adopt land use regulations for provisions to specifically regulate same.

Section 3: Definitions

BATTERY (IES): A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this law, batteries utilized in consumer products are excluded from these requirements.

BATTERY ENERGY STORAGE MANAGEMENT SYSTEM: An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects temperatures or other conditions are detected.

BATTERY ENERGY STORAGE SYSTEM: A rechargeable energy storage system consisting of electrochemical storage batteries, battery chargers, controls, power conditioning systems and associated electrical equipment designed to store energy to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier I or Tier 2 Battery Energy Storage System as follows:

A. Tier I Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.

B. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area.

CELL: The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

Section 4: Moratorium

A. The Town Board hereby enacts a moratorium which shall prohibit the siting, establishment, placement, installation, construction, erection, modification, and enlargement of battery energy storage systems anywhere within the Town of Fenner.

B. This moratorium shall be in effect for a period of twelve (12) months from the effective date of this local law and shall expire on the earlier of (i) the date twelve (12) months from said effective date of this local law, unless renewed; or (ii) the enactment by the Town Board of a resolution indicating the Town Board is satisfied that the need for the moratorium no longer exists.

C. This moratorium shall apply to all zoning districts and all real property within the Town.

D. Battery energy storage systems which have previously been approved or are located on Town-owned property are hereby expressly excluded from this moratorium, and may be sited, placed, installed, constructed, erected and operated in accordance with approved plans. Further modification, alteration or enlargement of previously approved battery energy storage systems is prohibited while the moratorium is in effect.

Section 5: Relief from Provisions of this Local Law

A. The Town Board reserves to itself the power to vary or adapt the strict application of the requirements of this local law in the case of unusual hardship which would deprive the owner of all reasonable use of the lands involved.

B. Application for relief shall be filed in triplicate with the Town Code Enforcement Officer together with a filing fee of \$250.00. The application shall specifically identify the property involved, recite the circumstances pursuant to which the relief is sought and the reasons for which the relief is claimed. Any costs, including expert consulting fees or attorney's fees, incurred by the Town, shall be reimbursed to the Town by the Applicant. The Town Board shall apply Use Variance criteria as set forth in the New York State Town Law, Section 267-b (2) in reviewing any application for relief.

C. The Town Board may refer any applications for relief herein to the Town Planning Board for its advice and recommendations, but all decisions on granting or denying such relief shall be made solely by the Town Board after determining whether or not the requested relief is compatible with any contemplated amendments to the Town Zoning Law. Unless completely satisfied that the proposed relief is compatible, the Town Board shall deny the application.

D. The Town Board shall conduct a public hearing on any request for relief within forty-five (45) days of receipt by the Town Code Enforcement Officer and shall issue its final decision on requests for relief within thirty (30) days from the date of the public hearing.

Section 6: Penalties

Any person, firm or corporation that shall establish, place, construct, enlarge or erect any battery energy storage systems in violation of the provisions of this local law or shall otherwise violate any of the provisions of this local law shall be subject to:

A. A fine not to exceed One Thousand and 00/100 Dollars (\$1,000.00) or imprisonment for a term not to exceed fifteen (15) days, or both. Each day a violation continues shall be considered a new violation.

B. A civil action inclusive of injunctive relief in favor of the Town to cease any and all such actions which conflict with this local law and, if necessary, to remove any constructions, improvements, or related items or byproducts which may have taken place in violation of this local law.

Section 7: Enforcement

This local law shall be enforced by the Code Enforcement Office of the Town of Fenner or such 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.

Section 8: Validity & 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 affect any other section of this local law.

Section 9: Effective Date

This local law shall take effect immediately upon passage and thereafter shall be filed with the New York State Department of State and shall remain in force and effect for a period of twelve (12) months from the date of passage.”

The question of the adoption of the foregoing resolution was duly put to a vote and upon roll call, the vote was as follows:

William Cody	Councilor	Voted	yes
Adam Pushlar	Councilor	Voted	Yes
Hannah Strack	Councilor	Voted	Yes
William Wester	Councilor	Voted	Yes
David Jones	Supervisor	Voted	Yes

The foregoing resolution was thereupon declared duly adopted.

DATED: October 11, 2023

**RESOLUTION NO. 2023-31
TO THE TOWN BOARD**

OF THE TOWN OF FENNER

WHEREAS, at the request of the Town Supervisor, the attorney for the Town has prepared and presented a proposed local law entitled, "A local law authorizing a property tax levy in excess of the limit established in General Municipal Law section 3-c for the 2020 fiscal year", and

WHEREAS, the proposed local law is intended to authorize the Town of Fenner to exceed the tax levy cap otherwise provided under New York State law for the Town's 2020 budget and fiscal year, and

WHEREAS, upon notice duly published and posted as required, a public hearing on this local law was held, which public hearing was, or is hereby closed, and

WHEREAS, the adoption of this local law is not an action that may have an effect on the environment as defined by the implementing regulations of the New York State Environmental Quality Review Act and is therefore not an action subject to SEQRA.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

After due deliberation, the Board finds it in the best interest of the Town of Fenner to adopt this local law, and does hereby adopt this local law entitled, "A local law authorizing a property tax levy in excess of the limit established in General Municipal Law section 3-c for the 2024 fiscal year." The Town Clerk is hereby directed to enter said Local Law in the minutes of this meeting, and to give due notice of the adoption of said Local Law to the Secretary of State.

Councilperson Pushlar motioned to approve Resolution 2023-34 Councilperson Strack seconded motion. Motion approved by Board

The question of the adoption of the foregoing resolution was duly put to a vote and upon roll call, the vote was as follows:

William Cody	Councilor	Voted	Yes
Adam Pushlar	Councilor	Voted	Yes
Hannah Strack	Councilor	Voted	Yes
William Wester	Councilor	Voted	Yes
David Jones	Supervisor	Voted	Yes

The foregoing resolution was thereupon declared duly adopted.

Motion to start public hearing for by Councilperson Strack Seconded by Councilperson Wester at 8:10PM.

PUBLIC COMMENT Supervisor Jones explained what his meant to the public, no questions were asked.

Motion to end public hearing was made by Councilperson Wester Seconded by Councilperson Strack at 8:13 PM

TOWN OF FENNER
TOWN BOARD RESOLUTION
2023-32
October 11, 2023
TOWN OF FENNER LOCAL LAW NO. 1 OF 2023

("A Local Law Establishing Dog Control in the Town of Fenner")

The following resolution was offered by Councilor Strack who moved its adoption, seconded by Councilor Wester to wit:

WHEREAS, pursuant to the provisions of the Municipal Home Rule Law, a proposed local law titled Local Law No. 1 -2023, "A Local Law Establishing Dog Control in the Town of Fenner," was presented and introduced at a regular meeting of the Town Board of the Town of Fenner held on September 13, 2023; and

WHEREAS, a public hearing was held on such proposed local law on this 11th day of October, 2023, by the Town Board of the Town of Fenner and proof of publication of notice of such public hearing, as required by law, having been submitted and filed, and all persons desiring to be heard in connection with said proposed local law having been heard, and said proposed local law having been in the possession of the members of the Town Board of the Town of Fenner in its final form in the manner required by Section 20 of the Municipal Home Rule of the State of New York; and

WHEREAS, the enactment of Local Law No. 1-2023 has previously been determined to be an unlisted action and will have no significant effect on the environment thus concluding the SEQR review process; and

WHEREAS, it is in the public interest to enact said Local Law No. 1-2023.

NOW, THEREFORE, it is

RESOLVED, that the Town Board of the Town of Fenner, Madison County, New York, does hereby enact Local Law No. 1-2023 as Local Law No. _1-2023 as follows:

“TOWN OF FENNER

LOCAL LAW 1-2023

A Local Law Establishing Dog Control

Within the Town of Fenner

Be it enacted as follows:

Section 1. Purpose.

The purpose and intent of this local law shall be to preserve the public peace and good order of the Town of Fenner, Madison County, New York, to contribute to the public welfare and to the preservation and

protection of the property and the person of the inhabitants of said Town by declaring and enforcing certain regulations and restrictions on activities of dogs and owners of dogs within the Town.

Section 2. Definitions.

As used in this local law, the following terms shall have the meanings indicated:

AT LARGE - Any dog shall be deemed "at large" when it is off the property of its owner and not under restraint.

DOG - Any member of the species *Canis familiaris*.

OWNER - Any person who owns, keeps, harbors, or has the care, custody, or control of a dog. Dogs owned by minors shall be deemed to be in the custody and control of the minor's parents or other head of the household where the minor resides.

RESTRAINT - A dog is under restraint when it is controlled by a leash, said leash not to be in excess of six (6) feet, or in the presence of a competent person and obedient to that person's commands; or on or within a vehicle being driven or parked on the street, or within the property limits of its owner or keeper or upon the premises of another with the consent of such other person.

Section 3. Dog Control Officer.

The Dog Control Officer of the Town of Fenner shall have all of the powers of a peace officer in the execution of this local law and in the execution of Article 7 of the Agriculture and Markets Law, including the service of summons, and the service and execution of any other order or process. Every dog seized by the Dog Control Officer shall be maintained, redeemed, sold, or destroyed in accordance with Article 7 of the Agriculture and Markets Law.

Section 4. Prohibited acts.

- A. No owner shall permit or allow a dog to run at large within the Town of Fenner, unless such dog shall be restrained as provided in Section 2 herein.

- B. No dog shall be permitted to cause damage or destruction to property or commit a nuisance or to defecate upon the premises of a person, other than to or upon the premises of the owner or persons harboring such dog. If a dog defecates upon any premises other than upon the premises of the dog's owner or of the person harboring such dog, the owner of said dog or the person harboring such dog shall immediately remove, and properly dispose of, any feces so deposited by such dog.
- C. No owner shall keep or harbor a dog which howls or barks habitually or continuously so as to disturb the peace and quiet of other persons.
- D. No dog shall be permitted to chase or otherwise harass any person in such manner as to reasonably cause intimidation or to put such person in reasonable apprehension of bodily harm or injury.
- E. No dog shall be permitted to habitually chase or bark at moving motor vehicles, bicycles, animals, or snowmobiles.
- F. No unspayed female dog in season shall be permitted to be outside a building or a fenced enclosure, except that the owner may exercise such dog while on a securely fastened leash not more than six (6) feet long.
- G. No person owning or harboring a dog shall fail to provide such dog with wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering and humane care and treatment.

Section 5. Complaints.

Any person who observes a dog violating or which is being permitted to violate any of the restrictions set forth in this local law may file a complaint, signed under oath, with the Dog Control Officer, specifying the violation, the date thereof, damage, if any, caused, a description of the dog and name and residence, if known, of the owner or other person harboring such dog.

Section 6. Applicability.

This local law shall not apply to any dog exempted by Section 107 of the New York State Agriculture and Markets Law.

Section 7. Penalties.

Any dog found to be in violation of this local law may be seized by the Dog Control Officer pursuant to Section 118 of the Agriculture and Markets Law. With respect to a violation of this local law the penalties shall be:

- A. For a first offense, a fine of not less than \$25.00, nor more than \$50.00.
- B. For a second offense, committed within five (5) years of the first offense, a fine of not less than \$50.00, nor more than \$100.00.
- C. For a third offense, committed within five (5) years of the second offense, a fine of not less than \$100.00, nor more than \$250.00.
- D. A fine not paid within thirty (30) days may be enforced by the imposition of a jail sentence of up to fifteen (15) days.

Section 8. Effective Date.

This local law shall become effective upon filing with the Secretary of State.”

The question of the adoption of the foregoing resolution was duly put to a vote and upon roll call, the vote was as follows:

William Cody	Councilor	Voted	Yes
Adam Pushlar	Councilor	Voted	Yes
Hannah Strack	Councilor	Voted	Yes
William Wester	Councilor	Voted	Yes
David Jones	Supervisor	Voted	Yes

The foregoing resolution was thereupon declared duly adopted.

DATED: October 11, 2023 Councilperson Strack motioned to approve Resolution 2023-32
Councilperson Wester seconded motion.

Motion approved by Board The question of the adoption of the foregoing resolution was duly put to a vote and upon roll call, the vote was as follows:

The foregoing resolution was thereupon declared duly adopted.

Councilperson Pushlar motioned to approve Resolution 2023-34 Councilperson Strack seconded motion. Motion approved by Board

The question of the adoption of the foregoing resolution was duly put to a vote and upon roll call, the vote was as follows:

William Cody	Councilor	Voted	Yes
Adam Pushlar	Councilor	Voted	Yes
Hannah Strack	Councilor	Voted	Yes
William Wester	Councilor	Voted	Yes
David Jones	Supervisor	Voted	Yes

The foregoing resolution was thereupon declared duly adopted.

TOWN OF FENNER
RESOLUTION 2023-33
2023 GENERAL - September Budget Modifications
(for October 2023 meeting)
TO ADJUST FOR BUDGET SHORTFALL(S)

TOWN OF FENNER			
2023 GENERAL - SEPTEMBER Budget Modifications (for OCTOBER 2023 mtg)			
TO ADJUST FOR BUDGET SHORTFALL(S)			
Current Appropriation Shortfall		Transfer (from) to Increase Appropriation (cover shortfall)	
A1355.4 - ASSESSOR - CONTRACTUAL EXPENSE	\$175.32	A1990.4 Contingency	-\$1,260.62
A1410.4 - TOWN CLERK - CONTRACTUAL EXPENSE	\$287.24		
A1430.42 - PERSONNEL - PAYROLL SERVICE FEE	\$360.00		
A5132.4 - GARAGE - REPAIRS & MAINTENANCE	\$438.06		
	<u>\$1,260.62</u>		

OTHER BUSINESS –

Morraine Road trailer park no updates. No one is currently living there.

Resident asked if intervener funds were being pursued by the town to fight The Liberty Renewables Hoffman Wind Farms, yes. Resident is requesting to do a joint application for those funds to pay for a lawyer that is in expert in this area.

At this time, it is believed that Oxbow Solar is seeking a waiver, as they need to file with NYISO – an interconnection agreement with National Grid.

VOUCHERS:

Councilperson Pushlar moved to approve payment of the General Fund G23-127-G23-136 in the amount as \$1,781.50 set forth in abstract number 9 and as audited. Seconded by Councilperson Wester. Approved by the Board.

Councilperson Pushlar moved to approve payment of the Highway Fund claims numbers H23-103 – H23-121 in the amount \$110468.56 as set forth in abstract number 9 and as audited. Seconded by Supervisor Jones. Approved by the Board.

ADJOURNMENT

Councilperson Wester moved to adjourn the meeting 8:37 seconded by Councilperson Pushlar. Approved by Board

HANDOUTS AND REPORTS:

- On file in the Town Clerk’s Office.
- Town Clerk Report
- Supervisors Report

Highway Superintendent Report
CEO Report
LL 1,2,3

Respectfully Submitted,

Lisa Dolan Town Clerk