

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County
City of Livingston
Town
Village

Local Law No. 5 of the year 2024

A local law to adopt and extend a temporary twelve (12) month moratorium on Battery Energy Storage Systems within the Town of Livingston

Be it enacted by the Town Board of the
(Name of Legislative Body)

County
City of Livingston as follows:
Town
Village

Section 1. TITLE. This local law shall be known as Local Law No. 5 of the Year 2024, a local law extending a moratorium on Battery Energy Storage Systems for twelve (12) months.

Section 2. LEGISLATIVE INTENT.

The Town of Livingston presently has a zoning law to regulate land use within the Town. The Town is currently reviewing possible regulations for Battery Energy Storage Systems (BESS) and desires to draft a zoning law amendment that would provide for proper regulation of such projects and installations. The Town has been monitoring localities near the Town that have been dealing with siting BESS systems, and the public concerns of such installations. The extension of the moratorium will enable town officials to comprehensively address the issues involved with BESS. Livingston is a rural community and wants to ensure BESS are placed and sited in harmony with the surrounding uses and in appropriate areas of the town.

While the Town wishes to assist with the goals of energy production and energy storage, BESS installations are not uses that were contemplated within the town's comprehensive plan, or current zoning law and such uses will have to be thoroughly evaluated and studied for their potential impacts to the town before appropriate zoning for such a uses can be developed. BESS are a new type of use and communities are researching the potential dangers such as fires, environmental impacts, visual impacts, community impacts against the benefits to the local communities. Local municipalities are being presented with the theory that the use is entitled to a "public utility" theory of zoning, attempting to override the local home rule power of the town to adopt zoning for uses. These complex issues need to be evaluated for proper zoning to be put in place to regulate the use.

The Town needs additional time to study the use and develop and adopt appropriate zoning regulations.

The Town Board finds that pursuant to 6 NYCRR 617.5(c)(30) the adoption of a moratorium on land development or construction is a Type II action under the New York State Environmental Quality Review Act ("SEQRA") which has been determined not to have a significant impact on the environment. Further, this moratorium is enacted by the Town Board 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 3. DEFINITIONS.

BATTERY ENERGY STORAGE SYSTEM - A rechargeable energy storage system consisting of one or more devices, including batteries, battery chargers, controls, power conditioning systems and associated electrical equipment, assembled together, capable of storing energy in order to provide electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle.

Section 4. MORATORIUM

A. The Town Board hereby adopts and extends a moratorium in effect, for an additional twelve (12) months, which shall prohibit application for or Town review of Battery Energy Storage Systems. The intention to be no lapse or gap in the moratorium adopted by Local Law 5 of 2024, but to extend and continue the moratorium.

B. This moratorium shall be in effect for a period of twelve (12) months from the effective date of this local law and the moratorium imposed by this law shall expire on the earlier of (i) the date twelve (12) months from said effective date, unless renewed: or (ii) the enactment by the Town Board of a local law adopting zoning regulations for BESS or 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. Pursuant to this moratorium, the Planning Board shall not review any applications for Battery Energy Storage Systems, nor shall it grant any preliminary or final approval for any site plan or special use permit.

E. Pursuant to this moratorium, the Building Inspector shall not issue Building Permits or Certificates of Occupancy for any Battery Energy Storage Systems.

F. Pursuant to this moratorium, the Zoning Board of Appeals shall not grant any approvals for any variance that involves the construction, reconstruction, relocation, enlargement or modification of any site intended to be used for Battery Energy Storage Systems and shall not undertake any appeals related to the use.

Section 5. RELIEF FROM PROVISIONS OF THIS LOCAL LAW.

A. If any owner of property within the Town seeks relief from this moratorium to enable such owner to apply for or seek continued review of, activities otherwise prohibited under this moratorium, such owner shall make application to the Town Board.

B. It shall be the burden of the owner for such relief to demonstrate to the satisfaction of the Town Board, upon clear and convincing evidence, that an unjust result and extraordinary financial hardship will occur to the property owner if such relief is not granted, and such showing must demonstrate that the proposed activity for which relief is sought shall be consistent with the reasonable and orderly development of the Town.

C. Such relief shall be the subject of a public hearing before said Town Board.

D. It shall be within the discretion of the Town Board to grant, in whole or in part, or deny, the application for such relief from the terms of this moratorium.

Section 6. PENALTIES.

Any person, partnership, association, corporation, landowner, lessee or licensee which shall construct, reconstruct, relocate, enlarge or modify any site to be used for a Battery Energy Storage Systems in violation 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) per individual and not exceeding Five Thousand and 00/100 Dollars (\$5,000.00) as to a corporation, partnership, or association, or imprisonment for a term not to exceed one (1) year, or both;

B. A civil penalty in the amount of One Hundred and 00/100 Dollars (\$100.00) for each day that such violation shall exist;

C. 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 Officer of the Town of Livingston 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 and to keep all records necessary and appropriate to the office and to file same in the office of the Town Clerk.

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 effect of any other section of this local law.

Section 9. EFFECTIVE DATE.

This local law shall be filed with the New York State Department of State and shall take effect upon the terms stated herein, and then remain in force and effect for a period of twelve (12) months from the effective date, unless extended or rescinded.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 5 of 2024 of the Town of Livingston was duly passed by the Town Board on _____, in
(Name of Legislative Body)

accordance with the applicable provisions of law.

2. (~~Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer.*~~)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County) (City) (Town) (Village) of _____ was duly passed by the _____ on _____, 20____, and was (approved)(not approved)(repassed after
(Name of Legislative Body)

disapproval) by the _____ and was deemed duly adopted on _____, 20____,
(Elective Chief Executive Officer*)

in accordance with the applicable provisions of law.

3. (~~Final adoption by referendum.~~)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County) (City) (Town) (Village) of _____ was duly passed by the _____ on _____, 20____, and was (approved)(not approved)(repassed after
(Name of Legislative Body)

disapproval) by the _____ on _____, 20____. Such local law was
(Elective Chief Executive Officer*)
submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____, 20____, in accordance with the applicable provisions of law.

4. (~~Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.~~)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 20____, and (approved)(not approved)(repassed after
(Name of Legislative Body)

disapproval) by the _____ on _____, 20____. Such local law was subject
(Elective Chief Executive Officer*)

to permissive referendum and no valid petition requesting such referendum was filed as of _____, 20____, in accordance with the applicable provisions of law.

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

Hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____, _____, became operative.

6. (County local law concerning adoption of Charter.)

Hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____, 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

Tammy Molinski, Town Clerk

(Seal)

Date: