

## *Local Law Filing*

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**(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  Town  Village  
(select one)

**of Montgomery**

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STATE RECORDS  
DEC 08 2023

DEPARTMENT OF STATE

**Local Law No. 6 of the year 2023**

**A LOCAL LAW ENTITLED "A LOCAL LAW ESTABLISHING A TWELVE-MONTH MORATORIUM PROHIBITING THE REVIEW AND APPROVAL OF APPLICATIONS FOR THE DEVELOPMENT OF BATTERY ENERGY STORAGE SYSTEMS IN THE TOWN OF MONTGOMERY"**

**Be it enacted by the Town Board of the Town of Montgomery as follows:**

See attached.

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**(If additional space is needed, attach pages the same size as this sheet, and number each.)**

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**TOWN OF MONTGOMERY**

**LOCAL LAW NO. 6 OF 2023**

**A LOCAL LAW ENTITLED “A LOCAL LAW ESTABLISHING A TWELVE-MONTH MORATORIUM PROHIBITING THE REVIEW AND APPROVAL OF APPLICATIONS FOR THE DEVELOPMENT OF BATTERY ENERGY STORAGE SYSTEMS IN THE TOWN OF MONTGOMERY”**

Be it enacted by the Town Board of the Town of Montgomery, County of Orange, State of New York as follows:

**Section 1. Title.**

This Local Law shall be referred to as “A LOCAL LAW ESTABLISHING A TWELVE-MONTH MORATORIUM PROHIBITING THE REVIEW AND APPROVAL OF APPLICATIONS FOR THE DEVELOPMENT OF BATTERY ENERGY STORAGE SYSTEMS IN THE TOWN OF MONTGOMERY”.

**Section 2. Definitions.**

“Code” means the Town of Montgomery Code.

“Town” means the Town of Montgomery.

“Town Board” means the Town Board of the Town of Montgomery.

“Town Clerk” means the Town Clerk of the Town of Montgomery.

“Land Use Approvals” means site plan approvals, subdivision plats, special use permits, and variances.

“Battery Energy Storage System” is defined in the Town of Montgomery Code Section 235-11.13(B) to wit:

One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time. A battery energy storage system is classified as a Tier 1 or Tier 2 battery energy storage system as follows:

1. Tier 1 battery energy storage systems have an aggregate energy capacity less than or equal to 600 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
2. Tier 2 battery energy storage systems have an aggregate energy capacity greater than 600 kWh or are comprised of more than one storage battery technology in a room or enclosed area.

**Section 3. Legislative Findings, Purpose and Intent.**

The Town Board hereby finds that since the adoption of Town Code Section 235-11.13 entitled: Battery Energy Storage Systems in 2022, which set forth regulations and guidelines for the development of such systems within the Town, certain local and statewide fires and related events have called into question the safety of these systems. In July 2023, New York Governor Kathy Hochul launched a special taskforce to investigate the safety of battery energy storage facilities after a third blaze in the state this year left residents warned to stay indoors. A Fire Safety Working Group was established and immediate inspections of storage sites in the state were conducted after a battery fire at a solar farm sent potentially toxic smoke billowing across the Albany area in July 2023. According to studies, battery fires are most commonly caused by thermal runaway, when a battery's temperature increases, leading to cell short-circuiting or disintegration. Thermal runaway can be caused by factors including mechanical damage, poor air conditioning and electrical issues such as overcharging.

Accordingly, the Town Board hereby finds that there is a critical and compelling need, in the public interest as set forth herein, to impose a Moratorium on the review and approval of applications for the construction and development of Battery Energy Storage Systems in the Town.

The Town Board recognizes the impact that Battery Energy Storage Systems development in the Town may have on the health, safety and general welfare of the Town, its inhabitants and visitors, and upon the environment in general. These circumstances require that the Town Board review and update the Town Code to, inter alia, ensure that if such facilities and systems are permitted to be developed, adequate safety measures are in place to protect persons and property. Pending adoption of updated zoning regulations that result as a consequence thereof, it is necessary for the Town Board to take reasonable temporary measures to prohibit the review and approval of any land use applications relating to the construction and development of Battery Energy Storage Systems in all districts within the Town in order to protect the public interest and welfare.

The Town Board will monitor the progress of the statewide taskforce and Fire Safety Working Group established by the Governor and consider amending the required provisions in the Town Code and related land use regulations in a manner that is consistent with the most appropriate safety plan to protect the public interest and welfare.

Pursuant to the statutory powers vested in the Town to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Montgomery hereby declares a twelve-month moratorium on the submission and processing of any applications of land use approvals, including site plan approvals, subdivision plats, special use permits, and variances (hereinafter "Land Use Approvals") for all Battery Energy Storage Systems within the Town pending the Town Board's completion and adoption of an update to the Town Code and applicable zoning regulations.

**Section 4. Scope of Controls**

- A. During the effective period of this Local Law:
1. No permits shall be issued for the permitting, construction and/or installation of Battery Energy Storage Systems in any districts within the Town without the approval of the Town Board of the Town of Montgomery, which approval will not be considered except in the event of proven hardship.
  2. The Town Planning Board shall not accept any application, grant any approval to, or continue the review of a subdivision plat, site plan, special use permit or other permit that includes the permitting, construction and/or development of Battery Energy Storage Systems in any districts within the Town.
  3. The Town Zoning Board of Appeals shall not accept any application or grant any approval for a variance or other permit that would have as a result the permitting, construction and development of Battery Energy Storage Systems in any districts within the Town.
  4. The Town of Montgomery Building Department shall not accept any building permit application or grant any Certificate of Occupancy or Certificate of Compliance for any Battery Energy Storage Systems.

**Section 5. Specific Exemptions.**

Notwithstanding the foregoing, the following is hereby exempt from the moratorium and may proceed with the usual permitting and licensing procedures as are currently provided by the Town Code.

- A. Any Battery Energy Storage System applicable to one and two-family homes that complies with Section 1206 of the 2020 New York State Residential Code entitled: "Electrical Energy Storage Systems".

**Section 6. Term.**

The moratorium imposed by this Local Law shall be in effect for twelve months from the effective date of this Local Law.

**Section 7. Hardship.**

- A. Should any owner of property affected by this Local Law suffer an unnecessary and extraordinary hardship due to the enactment and application of this Local Law, then the owner of said property may apply to the Town Board of the Town of Montgomery in writing for a variance from strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary or extraordinary hardship shall not be:
- a. the mere concern that regulations may be changed or adopted, or that the Plan may be amended; or
  - b. the mere delay in being permitted to make an application or waiting for a

decision on the application for a variance, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law.

- B. An application for an exception based upon unnecessary or extraordinary hardship shall be filed with the Town Clerk no earlier than the effective date of this Local Law, including a fee of one thousand and 00/100 Dollars (\$1,000.00) for each tax map parcel claimed to be subject to unnecessary or extraordinary hardship, by the landowner or the applicant upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of unnecessary or extraordinary hardship and shall contain such other information and/or documentation as the Town Board, shall prescribe as necessary for the Town Board to be fully informed with respect to the application.
- C. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a variance of this Local Law, the Town Board shall, within forty-five (45) days of receipt of a completed application, schedule a Public Hearing on said application upon five (5) days' written notice in the official newspaper of the Town of Montgomery. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within thirty (30) days of the close of said Public Hearing, render its decision either granting, denying, granting in part or denying in part, the application for a variation from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary or extraordinary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall vary the application to this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.
- D. Standard of Review. In reviewing an application for an exception based upon a claim of unnecessary or extraordinary hardship, the Town Board shall consider the following criteria:
  - a. The extent to which the proposed development activity would cause significant environmental harm, adversely impact surrounding natural resource areas, public health, comfort or safety concerns and/or have a negative impact upon the Town.
  - b. Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative used of the property.

**Section 8. Penalties.**

Any person, firm or entity that shall construct and/or develop a Battery Energy Storage System in any district within the Town 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. Such penalties as may otherwise be provided by applicable local laws, ordinances, rules, regulations of the Town for violations; and
- B. A fine not to exceed \$2,500.00 per day from the date that any action is taken in contravention of this local law or imprisonment for a period not to exceed fifteen (15) days, or both such fine and imprisonment, together with any other civil remedies available at law; and
- 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 construction that may have taken place in violation of this Local Law.

Any application accepted or approval granted in violation of this Local Law shall be null and void.

**Section 9. Superseding and Repealer Provisions.**

This Local Law shall supersede the Town of Montgomery Zoning Code in its entirety, the applicable sections of Article 16 of the Town Law, including, but not necessarily limited to Sections 130, 261, 262, 263, 264, 265, 267, 268, 269, 274-a, 274-b, 276, 277 and 278 and Executive Law Section 381 to the extent inconsistent with the same and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other statute determined to be in conflict with the provisions hereof.

**Section 10. Severability.**

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Montgomery hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

**Section 11. Repeal.**

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

**Section 12. Effective Date.**

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

(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. 6 of 2023 of the (County)(City)(Town)(Village) of Montgomery was duly passed by the Town Board of the Town of Montgomery on November 28, 2023, in 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 disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 20\_\_\_\_ 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 disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was 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 was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject 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

chairperson 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.)~~**

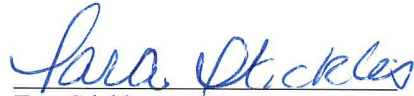
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority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

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

I 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 \_\_\_\_\_ 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 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.



Tara Stickle  
Town of Montgomery Town Clerk  
Clerk of the county legislative body, City, Town or Village  
Clerk or officer designated by local legislative body

(Seal)

Date: December 5, 2023