

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
- Town of SOUTHOLD
- Village

Local Law No. 6 of the year **2024**.

A Local Law entitled, A Local Law in relation to a twelve (12) month Extension of a Temporary Moratorium on the issuance of approvals and/or permits for Battery Energy Storage System (BESS) facilities.

Be it enacted the Town Board of the:

- County
- City
- Town of SOUTHOLD
- Village

I. PURPOSE - Moratorium Extension

The Town recognizes that Battery Energy Storage System (BESS) facilities are a key component to the viability and promotion of renewable energy sources, however, the technology of these systems is still in its infancy. This moratorium is necessary to permit the Town to 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. These issues are of great public concern and it is important that the potential for any risks is thoughtfully reviewed with in-depth analysis and that mitigation measures are identified to ensure the continued protection of our community and of our environment. Such findings will assist in the crafting of code that will determine criteria for future siting, site design, safety requirements and all other elements that may be necessary for approval.

A one (1) year moratorium was enacted by the Town Board of the Town of Southold as Local Law 8-2023, on January 31, 2023, with an effective date of April 11, 2023. The current moratorium is set to expire on April 11, 2024.

The moratorium as enacted, is intended to provide sufficient time for the Town to 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.

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

Since the enactment of the moratorium, there have been multiple incidents involving BESS facilities. In July of 2023, Governor Hochul formed an Inter-Agency Fire Safety Working Group to analyze data and make recommendations for safety. In December 2023, the Governor released initial findings and as recent as this month, the Governor released the initial recommendations. Governor Hochul also recently published a Draft Fire Code Recommendations Report concerning which public comment has been requested. As this process is not complete, the Town cannot adequately access the information and make sound decisions in enacting code. Further, the Task Force assembled by the Town, consisting of seven (7) representatives of the community, renewable energy industry, battery storage industry and environmental/municipal organizations, has not finalized its recommendations or established an action plan, which is intended to serve as a guide for the integration of battery energy storage systems into the Town Code. Finally, the work of the Town's outside consultant, updating the Southold Town Code, has not yet had the opportunity to incorporate the aforesaid recommendations, or identify regulations and/or required amendments to the Town's Comprehensive Plan.

The Town's Task Force was timely assembled and has worked consistently to examine current safety protocol standards and success rate in the application of new systems. Issues of public safety and risks of fire incidents have been considered, including risks associated with equipment failure and/or human error. The Task Force has also investigated equipment, personal safety gear and training. Additional considerations of the Task Force include zoning classifications, separation distances, plant size, minimum lot area, buffer requirements, lighting and security.

The Town Board wishes to be able to consider the proposals and recommendations of the Task Force, Code Consultant and the State on these issues, including various alternatives to current zoning; as well as implement public safety measures to insure the health, safety and welfare of the community. An extension of the moratorium is necessary to complete this function. This extension is specific and limited to BESS facilities only.

Given that the State's investigation is not yet concluded and the work of the Town's Consultant and BESS Task Force is ongoing, the Town Board finds it necessary to extend the moratorium already in effect, the terms of which remain unchanged and are set forth below. This action is necessary in order to protect the character, public health, safety and welfare of the residents of the Town of Southold.

II. ENACTMENT OF A TEMPORARY MORATORIUM

Until twelve (12) months from the effective date of this Local Law, after which this Local Law shall lapse and be without further force and effect and subject to any other Local Law adopted by the Town Board during the twelve (12) month period, no agency, board, board officer or employee of the Town of Southold including, but not limited to, the Town Board, the Zoning Board of Appeals, the Trustees, the Planning Board, or the Building Inspector(s), issuing any building permit pursuant to any provision of the Southold Town Code, shall issue, cause to be issued or allow to be issued any approval, special exception, variance, site plan, building permit, subdivision, or permit for any use identified as a Battery Energy Storage System (BESS) facility.

III. EXCLUSIONS

This Local Law shall not apply:

- 1) To any person or entity who/which has, prior to the effective date of this Local Law, obtained all permits required for such a facility and, relying upon such permission, has undertaken significant development of such facility.
- 2) To any application by a municipal corporation or special district or fire district

IV. AUTHORITY TO SUPERSEDE

To the extent and degree any provisions of this Local Law are construed as inconsistent with the provisions of Town Law this Local Law is intended pursuant to Municipal Home Rule Law to supersede any said inconsistent authority.

V. VARIANCE TO THIS MORATORIUM

Any person or entity suffering unnecessary hardship as that term is used and construed in Town Law section 267-b (2)(b), by reason of the enactment and continuance of this moratorium may apply to the Town Board for a variance excepting the proposed use from the temporary moratorium and allowing issuance of a permit all in accordance with the provisions of the Southold Town Code.

VI. 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, the judgment shall not impair or invalidate the remainder of this Local Law.

VII. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the Secretary of State.

(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 2024 of the ~~(County)(City)(Town)(Village)~~ of SOUTHOLD was duly passed by the TOWN BOARD on March 26, 2024, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or re-passage 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)(re-passed 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.)

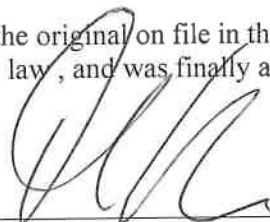
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified 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 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 there from and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.



Clerk of the County legislative body, City, Town or
Village Clerk or officer designated by local legislative body
Denis Noncarrow, Town Clerk
Date: March 27, 2024

(Seal)



RESOLUTION 2024-309

ADOPTED

DOC ID: 20120

THIS IS TO CERTIFY THAT THE FOLLOWING RESOLUTION NO. 2024-309 WAS ADOPTED AT THE REGULAR MEETING OF THE SOUTHOLD TOWN BOARD ON MARCH 26, 2024:

WHEREAS, there has been presented to the Town Board of the Town of Southold, Suffolk County, New York, on the 27th day of February, 2024, a Local Law entitled, **“A Local Law in relation to a twelve (12) month Extension of a Temporary Moratorium on the issuance of approvals and/or permits for Battery Energy Storage System (BESS) facilities”** and

WHEREAS the Town Board of the Town of Southold held a public hearing on the aforesaid Local Law at which time all interested persons will be given an opportunity to be heard, now therefor be it

RESOLVED that the Town Board of the Town of Southold hereby ENACTS the proposed Local Law entitled, **“A Local Law in relation to a twelve (12) month Extension of a Temporary Moratorium on the issuance of approvals and/or permits for Battery Energy Storage System (BESS) facilities”** reads as follows:

LOCAL LAW NO. 6 of 2024

A Local Law entitled, **“A Local Law in relation to a twelve (12) month Extension of a Temporary Moratorium on the issuance of approvals and/or permits for Battery Energy Storage System (BESS) facilities”**.

BE IT ENACTED by the Town Board of the Town of Southold, as follows:

I. PURPOSE - Moratorium Extension

The Town recognizes that Battery Energy Storage System (BESS) facilities are a key component to the viability and promotion of renewable energy sources, however, the technology of these systems is still in its infancy. This moratorium is necessary to permit the Town to 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. These issues are of great public concern and it is important that the potential for any risks is thoughtfully reviewed with in-depth analysis and that mitigation measures are identified to ensure the continued protection of our community and of our environment. Such findings will assist in the crafting of code that will determine criteria for future siting, site design, safety requirements and all other elements that may be necessary for approval.

A one (1) year moratorium was enacted by the Town Board of the Town of Southold as

Local Law 8-2023, on January 31, 2023, with an effective date of April 11, 2023. The current moratorium is set to expire on April 11, 2024.

The moratorium as enacted, is intended to provide sufficient time for the Town to 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.

Since the enactment of the moratorium, there have been multiple incidents involving BESS facilities. In July of 2023, Governor Hochul formed an Inter-Agency Fire Safety Working Group to analyze data and make recommendations for safety. In December 2023, the Governor released initial findings and as recent as this month, the Governor released the initial recommendations. Governor Hochul also recently published a Draft Fire Code Recommendations Report concerning which public comment has been requested. As this process is not complete, the Town cannot adequately access the information and make sound decisions in enacting code. Further, the Task Force assembled by the Town, consisting of seven (7) representatives of the community, renewable energy industry, battery storage industry and environmental/municipal organizations, has not finalized its recommendations or established an action plan, which is intended to serve as a guide for the integration of battery energy storage systems into the Town Code. Finally, the work of the Town's outside consultant, updating the Southold Town Code, has not yet had the opportunity to incorporate the aforesaid recommendations, or identify regulations and/or required amendments to the Town's Comprehensive Plan.

The Town's Task Force was timely assembled and has worked consistently to examine current safety protocol standards and success rate in the application of new systems. Issues of public safety and risks of fire incidents have been considered, including risks associated with equipment failure and/or human error. The Task Force has also investigated equipment, personal safety gear and training. Additional considerations of the Task Force include zoning classifications, separation distances, plant size, minimum lot area, buffer requirements, lighting and security.

The Town Board wishes to be able to consider the proposals and recommendations of the Task Force, Code Consultant and the State on these issues, including various alternatives to current zoning; as well as implement public safety measures to insure the health, safety and welfare of the community. An extension of the moratorium is necessary to complete this function. This extension is specific and limited to BESS facilities only.

Given that the State's investigation is not yet concluded and the work of the Town's Consultant and BESS Task Force is ongoing, the Town Board finds it necessary to extend the moratorium already in effect, the terms of which remain unchanged and are set forth below. This action is necessary in order to protect the character, public health, safety and welfare of the residents of the Town of Southold.

II. ENACTMENT OF A TEMPORARY MORATORIUM

Until twelve (12) months from the effective date of this Local Law, after which this

Local Law shall lapse and be without further force and effect and subject to any other Local Law adopted by the Town Board during the twelve (12) month period, no agency, board, board officer or employee of the Town of Southold including, but not limited to, the Town Board, the Zoning Board of Appeals, the Trustees, the Planning Board, or the Building Inspector(s), issuing any building permit pursuant to any provision of the Southold Town Code, shall issue, cause to be issued or allow to be issued any approval, special exception, variance, site plan, building permit, subdivision, or permit for any use identified as a Battery Energy Storage System (BESS) facility.

III. EXCLUSIONS

This Local Law shall not apply:

- 1) To any person or entity who/which has, prior to the effective date of this Local Law, obtained all permits required for such a facility and, relying upon such permission, has undertaken significant development of such facility.
- 2) To any application by a municipal corporation or special district or fire district

IV. AUTHORITY TO SUPERSEDE

To the extent and degree any provisions of this Local Law are construed as inconsistent with the provisions of Town Law this Local Law is intended pursuant to Municipal Home Rule Law to supersede any said inconsistent authority.

V. VARIANCE TO THIS MORATORIUM

Any person or entity suffering unnecessary hardship as that term is used and construed in Town Law section 267-b (2)(b), by reason of the enactment and continuance of this moratorium may apply to the Town Board for a variance excepting the proposed use from the temporary moratorium and allowing issuance of a permit all in accordance with the provisions of the Southold Town Code.

VI. 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, the judgment shall not impair or invalidate the remainder of this Local Law.

VII. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the Secretary of State.

**Denis Noncarrow
Southold Town Clerk**

RESULT: ADOPTED [UNANIMOUS]

MOVER: Greg Doroski, Councilman

SECONDER: Jill Doherty, Councilwoman

AYES: Doroski, Mealy, Smith, Krupski Jr, Doherty, Evans