

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 Village
(Select one.)

of Jackson

Local Law No. 1 of the year 2024

A local law ENACTING A MORATORIUM ON COMMERCIAL BATTERY ENERGY STORAGE
(Insert Title)
SYSTEMS.

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

County City Town Village
(Select one.)

of Jackson as follows:

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

(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. 1 of 2024 of the (County)(City)(Town)(Village) of Jackson was duly passed by the Town Board on March 6 2024, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

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____.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

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.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

* 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.)

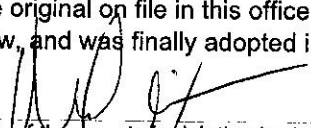
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified 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 therefrom 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 office designated by local legislative body

Date: 3/7/24

(Seal)

TOWN OF JACKSON
PROPOSED LOCAL LAW NO. 1 OF THE YEAR 2024
A LOCAL LAW ENACTING A MORATORIUM ON COMMERCIAL BATTERY ENERGY STORAGE SYSTEMS

SECTION 1. Enactment and Title.

The Town Board of the Town of Jackson does hereby enact the Town of Jackson Moratorium on Commercial Battery Energy Storage Systems Law. This Local Law shall impose a moratorium on applications or proceedings for applications for, the review of applications for, or the issuance of approvals or permits for the construction of any Commercial Battery Energy Storage Systems that is not a Residential Installation within the Town of Jackson.

The capitalized terms in the foregoing sentence, and as used throughout this Local Law, shall have the following meanings ascribed to them:

Applicant - All landowners and those claiming through or on behalf of the owner(s), whether by license, lease, easement, contract or by owner's designation as an agent for purposes of making any application or any land use review or approval, whether for a permit or otherwise.

Commercial Battery Energy Storage System - A rechargeable energy storage system consisting of electrochemical storage batteries, battery chargers, controls, power conditioning systems and associated electrical equipment with an aggregate energy capacity greater than or equal to 600kWH, designed mainly but not exclusively to store and distribute energy produced by a Commercial Solar or Wind Energy Facility.

Section 2. Authorization, Purpose and Intent.

Pursuant to the authority and provisions of the New York State Constitution, and Section 10 of the Municipal Home Rule Law, and the statutory powers vested in the Town of Jackson to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board (the "Board") of the Town of Jackson hereby declares a moratorium on applications or proceedings for applications for, the review of applications, or the issuance of approvals or permits for the construction of a Commercial Battery Energy Storage System within the Town of Jackson, lasting six (6) months from the date of passage of this local law, subject to two (3) month extensions.

The moratorium will allow time for Town officials to review, clarify, amend and update the Town's Regulations for commercial battery development, particularly with regard to where such development may be located within the Town. Additionally, this moratorium will allow the Town to adopt such other regulations as may be necessary to promote and preserve the health, safety and welfare of the Town and its residents.

Section 3. Scope of Controls.

During the effective period of this Local Law:

- A. Neither the Town Board nor the Planning Board shall conduct any review or consider any grant or any special permit or other permit or approval that will result in the approval, establishment or construction of any Commercial Battery Energy Storage System within the Town.
- B. To the extent permitted by law, this moratorium shall supersede all relevant provisions of the New York State Town Law, the New York State Building Code, any relevant Town Local Law and any other applicable law, rule or regulation, that may be in conflict herewith. If any ambiguity or conflict exists, this local law shall govern and the presumption shall in each case be that the moratorium is in effect.

Section 4. No Consideration of New, Revised or Renewal Applications.

No new, revised or renewal applications shall be accepted for filing, review or consideration, and no approvals or reviews that purport to allow or advance the development, siting, or construction of any Commercial Battery Energy Storage System shall be undertaken, reviewed, considered or issued by any board, officer, employee or agent of the Town, except as specifically set forth in Section 10 of this local law. Nor shall any language or term in this moratorium effect, or be construed to result in, any default approval, and any matter now pending shall be stayed in place during the pendency of this moratorium and any extension thereof, with all deadlines or other timelines suspended for the same number of days that this moratorium is in effect.

Section 5. Term.

The moratorium imposed by this Local Law shall be in effect for six (6) months from its effective date. This moratorium may be extended, or rescinded or removed, by local law. During this moratorium, the Town shall endeavor to adopt a new local law regarding the siting, establishment and construction of Commercial Battery Energy Storage Systems, and all manner of energy storage and generation.

Section 6. Location.

The moratorium imposed by this Local Law shall apply to the territorial limits of the Town of Jackson. Any dispute as to whether a property is encompassed within the geographic area detailed above shall be resolved by reference to the official tax maps of Washington County and the official New York corporate boundary maps for the Town of Jackson.

Section 7. Penalties.

The following provisions shall apply generally, and the violation of this Local Law shall allow and permit enforcement in any one or more of the following manners:

- A. When any term, provision or requirement of this Local Law is violated the Enforcement Officer may issue a written notice of violation to the Applicant (or other person in violation of). The notice of violation shall contain: (1) the name and address of the Person alleged to have violated this Local Law; (2) the address, when available, or a description of the building, structure or parcel upon which the alleged violation is occurring; (3) a brief statement specifying the nature of the violation; (4) a statement of the fine or penalty that may or may not be assessed; and (5) a clear statement identifying

whether the notice commences or may commence a civil or criminal proceeding. The failure to comply with a written notice of violation by correcting the violation is in itself a separate violation of this Local Law and may be further enforced as such. In addition, Executive Law §382 may be fully enforced separately from any such notice, and both notices may take the form of a single notice, which must, in addition to the above, contain the information and be served as required by Executive Law §382.

B. The Town Board may issue a stop work order for violation of this Local Law.

Any person or entity receiving same shall be required to halt all activity until the Enforcement Officer or a court of competent jurisdiction allows work to re-commence.

C. The Town of Jackson may also maintain actions or proceedings in the name of the Town in a court of competent jurisdiction to compel compliance with, restrain by injunction the violation of any provision or requirement of this Local Law, including to prevent, enjoin, correct, enforce or abate any violation of, or non-conformance with, any provision or requirement of this Local Law or the terms and conditions set forth in any waiver or approval issued hereunder. In any such proceeding the Town shall not be required to: (1) prove the lack of adequate remedy at law; (2) post a bond or other undertaking as a condition or requirement for any preliminary, interim, or permanent restraining order or injunction.

D. This Local Law may be enforced civilly or criminally. The following civil and criminal fines and penalties shall apply for any violation of this Local Law: a. First Offense – (1) A fine of not more than \$500, or (2) subject to a civil penalty of not more than \$500 to be recovered by the Town in a civil action. For the purposes of this Local Law, every week of ongoing violation is deemed a separate offense and violation, subject to a separate and accumulating fine.

b. Second Offense – being any violation within two (2) years of the above, (1) guilty of an unclassified misdemeanor and subject to a fine of not more than \$2,500 or (2) subject to a civil penalty of not more than \$2,500 to be recovered by the Town in a civil action. Every such person shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and be assessable for each week that such violation, disobedience, omission, neglect or refusal shall continue.

c. The above fines are in addition to any penalty, fine or sentence allowed or imposable pursuant to said Executive Law §382.

E. Any person violating this Local Law shall be required to restore land to its prior or undisturbed condition. If restoration is not undertaken within a reasonable time after notice, the Town may take necessary corrective action, the cost of which shall become a lien upon the property until paid. In addition, the Town may commence a civil action to recover such costs of restoration.

F. Criminal matters arising in relation to enforcement matters under this Local Law shall be classified as offenses per the following guidelines: (1) first offense shall be deemed violations, (2) second offenses shall be deemed unclassified misdemeanors; and (3) violations of Executive Law §382 shall be classified as set forth therein.

G. No remedy or penalty specified in this Local Law shall be the exclusive remedy available to the Town to address any violation of, or non-compliance with, the requirement of this Local Law. The rights and remedies of the Town are independent of each other and cumulative. The grant of any right or remedy in this Local Law is in addition to, and not limitation of or in substitution for any other right or remedy of the Town, whether sounding in law, equity or admiralty. Further, the election by the Town of any one right or remedy does not forestall or prevent the simultaneous or future election of any other right or remedy, whether relating to enforcement, sentencing, or otherwise.

Section 8. Exemptions and Non-Conforming Uses.

Notwithstanding any provision hereof to the contrary, any Commercial Battery Energy Storage System that has already been issued all necessary approvals or permits from the Town Board, or Planning Board or other relevant Board (the "Town Approvals") may continue such projects and such support activities that are being conducted in the Town as of the effective date of this Local Law, as long as such supporting activities are in all respects being conducted in accordance with all applicable laws and regulations and any conditions of approval, including all Town Approvals. Any expansion of a lawful, pre-existing, non-conforming use shall not be grandfathered under this Section and instead shall in all respects be prohibited as contemplated in Section 3 hereof. "Grandfathered" and allowed lawful pre-existing uses neither have nor possess any right to expand such non-conforming use whether above or below ground, and no such right shall be deemed, construed or implied to exist.

Section 9. Validity.

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 10. Hardship.

The Town Board is hereby authorized to accept and review (after public notice and hearing and in accordance with the law's requirement and this Local Law) requests for waiver application of the provisions of this Local Law by persons aggrieved hereby.

No such waiver shall be granted by the Town Board without a showing by the Applicant that applicable regulations and restrictions have caused unnecessary hardship.

A. Unnecessary Hardship. In order to prove such unnecessary hardship the Applicant is required to demonstrate to the Town Board that, with respect to every permitted use under Town land use, each of the following criteria is satisfied: (1) the Applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (2) the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the neighborhood; (3) granting a waiver will not change the essential character of the neighborhood; (4) the alleged hardship has not been self-created.

B. Reasonable Rate of Return. In evaluating whether the Applicant can realize a reasonable rate of return, the Town Board must examine whether the entire original or expanded property holdings of the Applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed development project). No waiver shall be granted

unless, in addition to satisfying all other applicable provisions of law and this Law, the Town Board finds that the Applicant has clearly demonstrated by detailed “dollars and cents” proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the area of the Town the property is located.

C. Unique Hardship. No waiver shall be granted unless, in addition to satisfying all other applicable provisions of the law and this Law, the Town Board finds that the entire parcel or which the project is a part possesses unique characteristics that distinguish it from other properties in the area.

D. Essential Character of the Neighborhood. In making this determination of whether the proposed development project will alter the essential character or the neighborhood, the Town Board shall take into account factors that are of vital importance to the citizens of the Town, including without limitation: (1) the rural residential and agricultural character of the Town, (2) irreplaceable recreation, historic or tourism sites; (3) the extent of hazard to life, limb or property may result from the proposed development project; (4) health impacts; (5) social and economic impacts on traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances; (6) impact on property values; (7) whether the Applicant will engage in the type of development that will result in degradation to the air quality, water quality or scenic or other natural resources of the Town. In order to find that the proposed development does not alter the essential character of the neighborhood, the Board shall interpret the public interest in said essential character of the neighborhood to require, at minimum, that the project will not do any of the following: pose a threat to public health safety, water quality or air quality, cause extraordinary public expense, or create a nuisance.

E. Self-Created Hardship. The Town Board may find that the Applicant suffers from a self-created hardship in the event that the Board finds that (1) the Applicant’s inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (2) the Applicant previously divided the property and is left with only a portion which suffers from a unique conditions for which relief is sought and which did not apply to the property as a whole; (3) when the Applicant purchased the property, he or she knew or should have known that the property was subject to land use restrictions; or (4) that the Applicant transferred or obtained property rights with only a unilateral expectation of development or investment character, and it shall be material to this question to examine the degree to which opposed to in fee (actual acquisition of fee simple title), and whether the anticipated income, profits, or receipts were conditional, contingent, or guaranteed.

If the Town Board grants a waiver from the provisions of this Local Law to the Applicant, the Applicant shall be required to comply with all provisions of the Town’s then applicable land use regulations and other laws and regulations, together with any amendment to such law or regulations which may be enacted during the term of this Local Law. Any waiver that is granted shall grant only the minimum waiver that the Town Board deems necessary and adequate to address the unnecessary hardship proven by the Applicant, and at the same time preserve and protect the character of the neighborhood and health, safety and welfare of the community.

Section 11. Effective Date.

This Local Law shall take effect immediately.