

# 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 Newfane, New York

Local Law No. \_\_\_\_\_ of the year 20 25

A local law Enacting A Temporary Moratorium on all Battery Storage System Facilities  
(Insert Title)

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

County  City  Town  Village  
(Select one.)

of Newfane, New York as follows:

SEE ATTACHED

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

## **SECTION I. SHORT TITLE**

This local law shall be cited as Local Law No. \_\_\_\_\_ of 2025 of the Town of Newfane, and it is entitled the “2025 Temporary Moratorium Law on Battery Energy Storage System Facilities.”

## **SECTION II. LEGISLATIVE FINDINGS**

WHEREAS, communities in New York State are witnessing the introduction of a previously unfamiliar form of Green-adjacent technology in the form of Battery Energy Storage Systems, or “BESS”; and  
WHEREAS, BESS facilities generally consist of rows of rechargeable batteries housed in self-contained, interconnected storage units. BESS facilities typically operate by drawing surplus energy from the local power grid during periods of low usage and storing it for later distribution back into the grid during peak demand; and  
WHEREAS, the Town of Newfane Fire Prevention Office and local Fire Companies have raised concerns regarding BESS facilities over the presence of highly flammable substances, such as from lithium-ion batteries, and possible air and groundwater contamination; and  
WHEREAS, following the third fire at a battery energy storage facility in as many months in New York last summer, Gov. Kathy Hochul announced the creation of a state inter-agency working group tasked with ensuring the safety of battery energy storage systems across New York; and  
WHEREAS, the Town Board finds it imperative that the town 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; and  
WHEREAS, other potentially significant planning concerns associated with BESS facilities such as noise generated by cooling fans may affect the quality of life of our residents; and  
WHEREAS, it is essential for the Town of Newfane to enact a temporary moratorium to carefully evaluate the implications of BESS facilities and assess how they may impact the Town, its residents, and its fire prevention infrastructure; and  
WHEREAS, the Town Board of the Town of Newfane has determined that in accordance with Section 617.5(c)(30) SEQRA the adoption of a moratorium on applications for building permits and/or certificate of occupancies for land development or construction of Battery Energy Storage System Facilities, constitutes a Type II Action, and further that the proposed moratorium has been identified as an Action not having a significant impact on the environment and is not subject to review under SEQRA.  
IT IS THEREFORE FOUND BY THE TOWN OF NEWFANE TOWN BOARD that the Town of Newfane shall implement a moratorium to allow for a comprehensive and deliberate examination of BESS facilities and the recently introduced state inter-agency working group, with the aim of preserving the Town's ability to address the unique needs and concerns of its community in the realm of battery energy storage system regulations.

## **SECTION III. AUTHORITY**

This moratorium is enacted by the Town Board of the Town of Newfane 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 IV. MORATORIUM**

- (A) For a period of six (6) months from the effective date of this Local Law, no applications shall be accepted or considered by the Town of Newfane for any utility grade battery energy storage system facilities.
- (B) This moratorium may be extended by one (1) additional period of up to six (6) months by resolution of the Town Board upon a finding of the necessity for such extension.

#### **SECTION V. VARIANCES**

The Town Board shall have the authority, after a public hearing, to vary or modify the application of any provision of the Local Law upon its determination that strict application of this Local Law would impose practical difficulties or extraordinary hardships upon an applicant and that the variance granted would not adversely affect the health, safety, or welfare of the citizens of the Town or significantly conflict with the general purpose and intent of this Local Law. Any request for a variance shall be in writing and filed with the Town Clerk and shall include a fee of Five Hundred Dollars (\$500.00) for the processing of such application. All such applications shall promptly be referred to the Town Board, which shall conduct a Public Hearing on the application on not less than five (5) days public notice and shall make its decision within sixty (60) days after the close of the Public Hearing.

#### **SECTION VI. SEVERABILITY**

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any other part of this Local Law which can be given effect without such invalid part or parts.

#### **SECTION VII. REPEAL OF OTHER LAWS**

All local laws in conflict with provisions of this Local Law are hereby superseded and suspended for the duration of this moratorium and for any additional period that this Local Law is extended. This Local Law also supersedes, amends and takes precedence over any inconsistent provisions of New York State Town Law, the Town's Municipal Home Rule powers, pursuant to Municipal Home Rule Law Sections 10 and 22. The Town Law provisions intended to be superseded include all of the Article 16 of the Town Law, Sections 261-285 inclusive and any other provisions of law that the Town may supersede pursuant to the Municipal Home Rule Law and the Constitution of the State of New York. The courts are directed to take notice of this legislative intent and to apply such intent in the event the Town has failed to specify any provisions of law that may require supersession. The Town Board hereby declares that it would have enacted this local law and superseded such inconsistent provisions had it been apparent.

#### **SECTION VIII. EFFECTIVE DATE**

This Local Law shall take effect immediately, as provided by law, upon filing with the New York State Secretary of State.

Dated: February \_\_\_\_ 2025

BY ORDER OF THE TOWN BOARD, TOWN OF NEWFANE  
DONNA LAKES, TOWN CLERK

(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. \_\_\_\_\_ of 20 25 of the ~~(County)(City)~~(Town)(Village) of Newfane was duly passed by the Town Board on \_\_\_\_\_ 20 25, 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 <sup>1</sup>\_\_\_\_\_ above.

\_\_\_\_\_  
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: \_\_\_\_\_