TOWN OF GARDINER

LOCAL LAW 2 OF 2026

A LOCAL LAW IMPOSING A SIX-MONTH EXTENSION OF THE MORATORIUM ON THE PROCESSING AND APPROVAL OF APPLICATIONS FOR CERTAIN BATTERY ENERGY STORAGE SYSTEMS IN THE TOWN OF GARDINER

Be it enacted by the Town Bord of the Town of Gardiner as follows:

Section 1. Legislative Intent and Purpose.

In 2008, the Town of Gardiner adopted the current Town Zoning Law in Chapter 220 of the Town of Gardiner Code. The Zoning Law does not specifically regulate the installation, siting, screening, and use of utility-scale Battery Energy Storage Systems separate from public utility facilities. No such utility-scale Battery Energy Storage Systems are currently operating in the Town of Gardiner.

The Town Board finds that Battery Energy Storage Systems are an advanced technology that presents risks different from conventional public utility facilities operating in the Town of Gardiner at the time that the current Town Zoning Law was adopted. The Town Board finds that without adequate regulations governing the location and placement of utility-scale Battery Energy Storage Systems, the installation of same may have a detrimental impact on nearby properties and on the community in general. The Town of Gardiner understands that in the Summer 2023 fires occurred at three energy storage facilities and a fire at a solar farm that is believed to have sent potentially toxic smoke across the Albany area. These events prompted the Governor to establish an Inter-Agency Fire Safety Working Group (FSWG), which recently made recommendations for changes to the New York State Fire Prevention and Building Code Council. New York State adopted updated energy storage safety codes based on the FSWG's recommendations. The updated NYS Fire Code provisions will take effect on or about January 1, 2026. Thus, utility-scale Battery Energy Storage Systems may have adverse impacts on the community including safety and fire risk, and may have a detrimental effect on the value of properties and may impair important agricultural resources within the Town of Gardiner. The New York State Energy Research and Development Authority has developed guidance, including a model law, for regulating Battery Energy Storage Systems to mitigate and address potential adverse impacts on the municipality.

In July 2025, the Town Board adopted a six-month moratorium to temporarily halt the siting and installation of utility-scale Battery Energy Storage Systems. In January 2026, the Town Board adopted a six-month extension of the moratorium. Since July 2025, no person or entity has applied for a hardship exemption under the moratorium. The Town Board is not aware of any current proposals for Battery Energy Storage Systems in the Town of Gardiner. The Town Board has discussed its concerns regarding Battery Energy Storage Systems safety and impacts for consideration in a local law; consulted legal counsel on options for a local law; reviewed laws from other Towns and the New York State Energy Research and Development Authority model law for Battery Energy Storage System regulation. Town Board Members have attended several conferences and informational sessions addressing Battery Energy Storage Systems-related issues. The Town Board held a public informational meeting for Town of Gardiner residents in April 2026. In January and February 2026, a

majority of the Town Board members have been replaced with new members. The current moratorium is scheduled to expire on or about July 23, 2026.

The Town Board hereby finds and determines that it needs an additional period of time covered by the moratorium imposed herein in order to carefully complete its review of utility-scale Battery Energy Storage Systems, and to prepare and adopt any needed amendments to the zoning law, which will necessarily involve scheduling and holding the required public hearing, performing the appropriate environmental review, compliance with applicable provisions of law, and filing with the Secretary of State of the State of New York.

The purpose of this moratorium is to allow the Town of Gardiner to temporarily halt the siting and installation of utility-scale Battery Energy Storage Systems for an additional period of six (6) months to enable the Town to adopt appropriate regulations and appropriate local laws regarding the installation, siting, screening, and use of utility-scale Battery Energy Storage Systems in the Town of Gardiner. It is intended that regulations will be drafted to govern the installation, siting, screening, and use of utility-scale Battery Energy Storage Systems within the Town while enabling such facilities to be developed in the interest of promoting the use of renewable energy sources. The Town Board declares the enactment of this local law as necessary to protect the public interest and the public health, safety and welfare during the course of this moratorium.

Section 2. Authority.

This local law is adopted pursuant to Municipal Home Rule Law Sections 10 and 22.

Section 3. Scope.

This Local Law applies to any Battery Energy Storage System having an aggregate energy capacity greater than 600kWh proposed to be installed in the Town of Gardiner during the effective period of the moratorium adopted in this Local Law. For purposes of this Local Law, "Battery Energy Storage System" shall mean one or more devices or systems, assembled together, capable of storing energy in order to supply electrical energy at a future time through electrochemical units (batteries) characterized by an anode and cathode connected together electrically in series, in parallel, or combination of both to charge, discharge, and store energy electrochemically, not including electric motor vehicles.

Section 4. Moratorium.

A. For a period of six (6) months from the date that this local law is filed with the Secretary of State of the State of New York or July 23, 2026, whichever is later, the Town Board, the Planning Board, the Zoning Board of Appeals, the Building Department, and the Code Enforcement Officer of the Town of Gardiner shall not accept, process, interpret, or approve any application for the installation, siting, or use of a Battery Energy Storage System except as set forth in Section 5 below.

B. This moratorium shall apply to all currently pending applications and any future applications for Battery Energy Storage Systems during the course of this moratorium.

Section 5. Hardship.

A. Should any owner of real property believe that they have suffered any unnecessary and extreme hardship through the application of the terms of this local law, said owner may apply to the Town Board of the Town of Gardiner in writing for a waiver from strict compliance with this local law. Such owner must submit such proof as they deem appropriate to demonstrate an unnecessary and extreme hardship. However, a mere delay in being permitted to make an application or in waiting for a decision on an application or a special permit, site plan, subdivision, or variance relating to the use of their property for a Battery Energy Storage System shall not be deemed to be an unnecessary hardship.

B. Upon submission of a written application to the Town Clerk by the property owner seeking a waiver of the local law, the Town Board shall within 30 days of receipt of said application schedule a public hearing at a future date, which date shall be no later than 60 days after receipt of the written application. Notice of said public hearing shall be made upon five days prior written notice in the official newspaper of the Town and notice of said public hearing shall be made by regular mail to all adjoining landowners of the application as such addresses are shown upon the tax rolls.

C. At said public hearing the property owner and any other party wishing to present evidence or testimony with regard to the application shall have an opportunity to be heard. Within 30 days of the close of said public hearing, or such additional time as agreed to between the Town Board and the property owner, the Town Board shall render its decision either granting or denying the application for a variation of the strict compliance of this local law.

Section 6. State Environmental Quality Review Act Determination

The Town Board finds that pursuant to 6 NYCRR § 617.5 this local law adopting an extension 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. As a Type II action under SEQRA, this local law is not subject to further review under 6 NYCRR § 617 or Environmental Conservation Law Article 8.

Section 7. Penalties for Offenses.

Any person or entity that violates the terms of this local law shall be guilty of a violation and subjected to a fine of not less than $250.00 per day and for imprisonment of 15 days. Each day that the violation continues shall be deemed a separate offense. In addition, the Town may enforce this local law by seeking an injunction or any other legal remedy it deems appropriate.

Section 8. Conflicts.

In the event that any provision of the Town of Gardiner Code is in conflict with the provisions of this local law such provision is hereby superseded by the requirements of this local law during the moratorium set forth above.

It is the intention of the Town Board to supersede any inconsistent provisions in the following sections of New York State Town Law § 265, § 267, § 267-a, § 267-b, § 274-a, § 274-b, § 276, and § 277 pursuant to Municipal Home Rule Law Section 10.

Section 5. Severability.

Each provision of this Law is severable from the others. If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be illegal, invalid, or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remaining clauses, sentences, paragraphs, sections, or parts of this Local Law which shall remain in full force and effect.

Section 6. Effective Date.

This Local Law shall take effect immediately upon filing with the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law or July 23, 2026, whichever is later.