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County City Town Village
(select one:)

of Montgomery

Introductory Local Law No. 4 of the year 2019

**A LOCAL LAW AMENDING CHAPTER 235 OF THE TOWN CODE TO ADD A
PROVISION SETTING FORTH REQUIREMENTS FOR CONSTRUCTION, BONDING,
INSPECTIONS AND AS-BUILT PLANS**

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

See attached.

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

TOWN OF MONTGOMERY

INTRODUCTORY LOCAL LAW NO. 4 OF 2019

**AMENDING CHAPTER 235 OF THE TOWN CODE TO ADD A PROVISION
SETTING FORTH REQUIREMENTS FOR CONSTRUCTION, BONDING,
INSPECTIONS AND AS-BUILT PLANS**

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

Section 1. Chapter 235 of the Town Code of the Town of Montgomery entitled “Zoning” shall be and hereby is amended by this Local Law to add the following new section 235.18 as follows:

§235.18-Improvements

§ 235.18.1 Construction; bonding; inspections; as-built plans.

A. Intent. It is the stated intent of the Town of Montgomery to protect the general health, safety and welfare of all its citizens. In order to better accomplish this goal, through full compliance with all plans approved by the Planning Board, all public and nonpublic improvements shall be fully completed and approved by the Town prior to a certificate of occupancy being issued.

B. Bonding.

(1) Public improvements. A construction bond, which shall only be in the form of cash, letter of credit or negotiable securities, may be delivered to the Town of Montgomery. Said construction bond shall guarantee to the Town that the owner/developer of said parcel will faithfully cause to be constructed and completed, within a reasonable period of time, the required public improvements on all approved site plans and subdivisions.^[1]

(2) Following the granting of final approval by the Planning Board, but prior to the signing and release of final maps, the owner/developer of a parcel shall follow the procedure listed either in Subsection B(2)(a) or (b) below:

(a) The owner/developer shall file construction bonds, as specified in Subsection B(1) above, with the Town Clerk.

[1] The amount of the construction bonds shall be established by the Planning Board Engineer, based upon detailed cost estimates prepared by the owner's/developer's design professional.

[2] Any such construction bonds shall be satisfactory to the Town Board and the Town Attorney as to form, sufficiency, manner of

execution and surety.

- (b) The owner/developer shall complete all the public and nonpublic improvements to the satisfaction of the Planning Board Engineer.
 - (c) The owner/developer may, upon request and approval, utilize a combination of Subsection B(2)(a) and (b) above [i.e., construct and have approved a portion of the public and nonpublic improvements and post construction bond(s) for the balance of the improvements prior to the issuance of a building permit].
- (3) Bonding for nonpublic improvements shall only be necessary prior to the issuance of building permits when the nonpublic improvements amount to over \$500,000.
- (4) The required improvements shall not be considered to have been completed until their installation has been approved by the Planning Board Engineer.
- (5) If construction bonds have been posted, they may only be released upon the certification of the Planning Board Engineer and the Town Attorney that all the requirements of the bond have been satisfied.
- (6) If the Town decides at any time during the term of the construction bond that the extent of the development that has taken place is not sufficient to warrant all the improvements covered by such bond, that the required improvements have been installed in a sufficient amount to warrant a reduction in the face amount of said bond or that the character and extent of such development requires additional improvements, the Town may mandate an increase or decrease in the face value of such construction bond by any appropriate amount so that the new face value will cover the cost in full of the amended list of improvements required by the Planning Board.

C. Inspections; as-built plans.

(1) Routine inspections.

(a) All improvements will be inspected by the Town Engineer to ensure satisfactory completion. In no case shall any paving work, including prime and seal coats, be done without permission from the Town Engineer. At least five days' notice shall be given to the Town Engineer prior to any such construction so that a representative of the Town may be present at the time work is to be done. The Town Engineer shall be notified after each of the following phases of the work has been completed so that he or his representative may inspect the work:

[1] Road subgrade.

[2] Curb and gutter forms.

[3] Road paving, after each coat in the case of priming and sealing.

[4] Sidewalk forms.

[5] Sanitary sewers, drainage pipes and other drainage structures before backfilling.

[6] All underground utilities prior to backfilling.

(b) If the Town Engineer or other duly designated representative does not carry out inspection of required improvements during construction, the subdivider or the bonding company shall not in any way be relieved of his or its responsibilities.

(2) As-built plans. The applicant's engineer will prepare as-built plans of the parcel's improvements, to include the locations of waterlines, sewer lines, drainage improvements, valves, manholes, pavement widths, curbs, sidewalks and any other information the Planning Board Engineer may request, which as-built plans shall be subject to the final approval of the Town's Consulting Engineer. In the event that the Town of Montgomery draws upon a bond or letter of credit posted by the applicant due in whole or in part to missing, incomplete or inaccurate as-built plans, said plans shall be prepared by the Town's Consulting Engineer utilizing the drawn funds.

(3) If the Planning Board Engineer, the Superintendent of Sewer and Water or the Town Engineer shall find or cause to have found that any of the required improvements have not been installed or constructed in accordance with the approved site plan, he shall so report to the Town Board, Planning Board, Town Clerk and Building Inspector.

(a) Upon receipt of such notification, the Town Board shall notify the owner/developer and, if necessary, the bonding company and take any and all necessary steps to preserve the Town's rights under the bond.

(b) If the owner/developer has posted a construction bond, the Town Board shall declare said bond in default and utilize the funds to install such improvements as were covered. In no event shall the Town install improvements exceeding the dollar amount of the construction bond.

(c) No additional plans shall be accepted or approved by the Planning Board or Building Inspector as long as the owner/developer is in default or not in compliance with a previously approved plan.

(4) Inspection fee. The owner/developer is responsible for the payment of all inspections, as-built drawings and related costs. Initially, an inspection fee of a percentage to be set by resolution of the Town Board, of the amount of the construction costs shall be paid to the Town, prior to the time that the Chairman of the Planning Board signs the final plat or the start of any site improvement work.

Section 2. 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 3. Repeal.

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

Section 4. 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.