

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 Montgomery

Introductory Local Law No. _____ of the year 2019

A LOCAL LAW AMENDING SECTION 140 OF THE TOWN ZONING CODE TO ADD SECTION 140-55: 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. ____ OF 2019

**AMENDING SECTION 140 OF THE TOWN ZONING CODE TO ADD SECTION
140-55: 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. Section 140 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 140-55 as follows:

§140-55-Improvements

§ 140-55.1 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, Irrevocable Letter of Credit or negotiable securities, shall 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. It is the Town’s intent to supersede Town Law 277(9)(c)(i) with this provision.

(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 Town Engineer, based upon detailed cost estimates prepared by the owner's/developer's design professional. Said amount is subject to Planning Board review, comment, and approval.

[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 Town 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 \$500,000.00.

(4) The required improvements shall not be considered to have been completed until their installation has been approved by the Town Engineer.

(5) If construction bonds have been posted, they may only be released upon the certification of the Town 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 (5) 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 applicant, the bank or the company holding the construction bond shall not in any way be relieved of his or its responsibilities.

(c) In addition to routine inspections by the Town Engineer, the applicant's engineer shall perform routine in-person inspections of the project in intervals to be determined by the Planning Board. After each inspection, the applicant's engineer shall issue a certificate to the Planning Board and Town as to the progress and completeness of work, including information as to any deviations with the operative Planning Board resolution, site plan approval and/or special use permit.

(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 Town Engineer may request, which as-built plans shall be subject to the final approval of the Town's 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 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 bank or company holding the construction bond 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.

(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 Introductory Local Law No. 4 of 2018 of the (County)(City)(Town)(Village) of Montgomery was duly passed by the Town Board of the Town of Montgomery on _____, 2018, in accordance with the applicable provisions of law.

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____.

(Name of Legislative body)
(Elective Chief Executive Officer*)

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 _____ 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 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.

Tara Stickles, Town of Montgomery Town Clerk
Clerk of the county legislative body, City, Town or Village
Clerk or officer designated by local legislative body

(Seal)

Date: _____