

VILLAGE OF MONTGOMERY

LOCAL LAW NO. 5 OF 2023

A LOCAL LAW ENTITLED “A LOCAL LAW ESTABLISHING A SIX-MONTH MORATORIUM PROHIBITING THE REVIEW AND APPROVAL OF CERTAIN LAND DEVELOPMENT APPLICATIONS IN THE VILLAGE OF MONTGOMERY”

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

Section 1. Title.

This Local Law shall be referred to as “**A LOCAL LAW ESTABLISHING A SIX-MONTH MORATORIUM PROHIBITING THE REVIEW AND APPROVAL OF CERTAIN LAND DEVELOPMENT APPLICATIONS IN THE VILLAGE OF MONTGOMERY**”.

Section 2. Definitions.

“Code” means the Village of Montgomery Code.

“Plan” means the Village of Montgomery Comprehensive Master Plan.

“Village” means the Village of Montgomery.

“Village Board” means the Board of Trustees of the Village of Montgomery.

“Village Clerk” means the Village Clerk of the Village of Montgomery.

“Land Use Approvals” means building permits, certificates of occupancy or completion, site plan approvals, subdivision plats, special use permits, and variances.

Section 3. Legislative Findings, Purpose and Intent.

In order to further protect the public health, safety and welfare of the residents of the Village of Montgomery as well as its businesses, it is the opinion of the Village Board that the enactment of a temporary land use moratorium is necessary to maintain the status quo of residential and nonresidential development in the Village. Recently, the Board of Trustees has been made aware through reports and findings by its consultants and Department of Public Works that the Village’s water supply is at a critical point. At this time, it has become necessary for the Village Board to temporarily suspend development in the Village in order to take a comprehensive review of its water supply and ensure the short- and long-term reliability of its water supply to all property owners, both current and existing in the Village.

This Local Law would allow the Village Board to review its water supply and future plans in order to review the status of the current Village water supply and to assess whether current measures being taken by the Village are sufficient to meet anticipated demands.

Pursuant to the statutory powers vested in the Village to regulate and control land use and to protect the health, safety and welfare of its residents, the Village Board of the Village of Montgomery hereby declares a six-month moratorium on the submission and processing of any applications of land use approvals, including building permits, certificates of occupancy or completion, site plan approvals, subdivision plats, special use permits, and variances (hereinafter “Land Use Approvals”) for all development within the Village pending the Village Board’s review of its water supply and any measures needed to ensure its sustainable service to all property owners within the Village.

Section 4. **Scope of Controls**

A. During the effective period of this Local Law:

1. No permits shall be issued for the permitting, construction and/or installation nor Land Use Approvals granted for any use in any districts within the Village without the approval of the Village Board, which approval will not be considered except in the event of proven hardship.
2. The Village Planning Board shall not grant any conditional or final approval for a subdivision plat, site plan, special use permit application or other permit that includes the permitting, construction and/or development of any use in any districts within the Village or would have as a result of the enlargement, relocation, or modification of any existing use.
3. The Village Zoning Board of Appeals shall not grant any approval for a variance or other permit, or issue any ruling involving an interpretation of another Village Official, including, but not limited to the Village Building Inspector, that would have as a result the permitting, construction and development of any use in any districts within the Village.
4. The Village of Montgomery Building Department shall not accept any building permit application or grant any Certificate of Occupancy or Certificate of Compliance for any additional use.

Section 5. **Specific Exemptions.**

Notwithstanding the foregoing, the following are hereby exempt from the moratorium and may proceed with the usual permitting and licensing procedures as are currently provided by the Village Code.

- A. Any project that has received a Negative Declaration (Notice of Determination of Non-Significance) from the lead agency charged with reviewing the proposed project pursuant to Title 6, Chapter VI, Part 617 of the New York State Environmental Quality Review Regulations (“SEQR”) or if said lead agency has accepted a fully completed Draft Environmental Impact Statement (“DEIS”) for review in the event that a Positive Declaration pursuant to the SEQR regulations has been issued.
- B. Any project that has received final project approval from the Village Planning Board prior to the effective date of this Local Law, provided that the property owner and/or applicant has received a lawful extension which has not expired.

- C. Any applications for an amended site plan so long as the use is currently existing on the site and in compliance with the Village Zoning Code and the proposed action will not result in any increase in water supply demands.
- D. Any applications for additions to residential uses so long as the application does not propose more than a 30% increase to the existing square footage of the structure in question.
- E. Village of Montgomery projects.

Section 6. Term.

The moratorium imposed by this Local Law shall be in effect for six months from the effective date of this Local Law. This Local Law shall be subject to renewal for cumulative periods of up to an additional twelve (12) months, if deemed appropriate by Resolution(s) of the Board of Trustees.

This moratorium may be withdrawn or lifted at any time by a resolution of the Village Board of Trustees.

Section 7. Hardship.

- A. Should any owner of property affected by this Local Law suffer an unnecessary and extraordinary hardship due to the enactment and application of this Local Law, then the owner of said property may apply to the Village Board of the Village of Montgomery in writing for a variance from strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary or extraordinary hardship shall not be:
 - a. the mere concern that regulations may be changed or adopted, or that the Plan may be amended; or
 - b. the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law.
- B. An application for an exception based upon unnecessary or extraordinary hardship shall be filed with the Village Clerk no earlier than the effective date of this Local Law, including a fee of one thousand and 00/100 Dollars (\$1,000.00) for each tax map parcel claimed to be subject to unnecessary or extraordinary hardship, by the landowner or the applicant upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of unnecessary or extraordinary hardship and shall contain such other information and/or documentation as the Village Board, shall prescribe as necessary for the Village Board to be fully informed with respect to the application.

- C. Procedure. Upon submission of a written application to the Village Clerk by the property owner seeking a variance of this Local Law, the Village Board shall, within forty-five (45) days of receipt of a completed application, schedule a Public Hearing on said application upon five (5) days' written notice in the official newspaper of the Village of Montgomery. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Village Board shall, within thirty (30) days of the close of said Public Hearing, render its decision either granting, denying, granting in part or denying in part, the application for a variation from the strict requirements of this Local Law. If the Village Board determines that a property owner will suffer an unnecessary or extraordinary hardship if this Local Law is strictly applied to a particular property, then the Village Board shall vary the application to this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.
- D. Standard of Review. In reviewing an application for an exception based upon a claim of unnecessary or extraordinary hardship, the Village Board shall consider the following criteria:
 - a. The extent to which the proposed development activity would cause significant environmental harm, adversely impact surrounding natural resource areas, public health, comfort or safety concerns and/or have a negative impact upon the Village.
 - b. Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.
 - c. Whether the Village can reasonably anticipate that the water demands of the proposed development can be met with current measures being taken by the Village to ensure a sustainable water supply.

Section 8. Penalties.

Any person, firm or entity that shall construct and/or develop a structure related to any type of use in any district within the Village or would have as a result the enlargement, relocation, or modification of an existing use in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to:

- A. Such penalties as may otherwise be provided by applicable local laws, ordinances, rules, regulations of the Village for violations; and
- B. A fine not to exceed \$2,500.00 per day from the date that any action is taken in contravention of this local law or imprisonment for a period not to exceed fifteen (15) days, or both such fine and imprisonment, together with any other civil remedies available at law; and
- C. Injunctive relief in favor of the Village to cease any and all such actions which

conflict with this Local Law and, if necessary, to remove any construction that may have taken place in violation of this Local Law.

Any application accepted or approval granted in violation of this Local Law shall be null and void.

Section 9. Superseding and Repealer Provisions.

This Local Law shall supersede the Village of Montgomery Zoning Code in its entirety, all sections of Article 7 of the New York State Village Law, including, but not necessarily limited to Sections 7-725-A(8), 7-225-B(6) and 7-728(8) concerning default approvals, Article 8 of the New York State Environmental Conservation Law and its associated DEC regulations at 6 NYCRR 617.1 et seq., and Executive Law Section 381 to the extent inconsistent with the same and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other statute determined to be in conflict with the provisions hereof.

Section 10. 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 Board of Trustees of the Village 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 11. Repeal.

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

Section 12. 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. 5 of 2023 of the (County)(City)(Town)(Village) of Montgomery was duly passed by the Board of Trustees of the Village of Montgomery on December 6, 2023, 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.~~

~~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____. 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.~~

* 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.


Tina Murphy
Village of Montgomery Deputy Village Clerk
Clerk of the county legislative body, City, Town or Village
Clerk or officer designated by local legislative body

(Seal)

Date: December 7, 2023