

**TOWN OF BLOOMING GROVE
TOWN BOARD**

**ADOPTED LOCAL LAW NO. 11 OF 2017
IMPLEMENTING AN EXTENSION OF THE MORATORIUM ON THE
DEVELOPMENT OF ANY AND ALL PROPERTY IN THE
TOWN OF BLOOMING GROVE, NEW YORK**

Section 1. Legislative Findings and Intent.

The Town of Blooming Grove Town Board ("Board") for the Town of Blooming Grove, New York ("Town") hereby found that there was a critical and compelling need, in the public interest as set forth herein, to impose a Moratorium on the development of residential property in the Town to the extent set forth herein.

- A. The Town previously undertook a Comprehensive Master Plan ("CMP") review and sufficient time had elapsed for that CMP to be reviewed and potentially revised in whole or in part since in order to remain useful, municipal plans require periodic review and revision, typically at five to ten-year intervals. Economic conditions and business practices, housing and land use needs, transportation conditions and environmental standards are in a constant state of change; so municipal land use plans need to be re-evaluated in order to provide for current needs. Accordingly, the need for a current CMP that reflects all current land use, socio-economic, community character and other impacts is required. Likewise, having a CMP that provides for smart and sustainable land use is critical for the Town.
- B. The Town Board found that the issues raised in the prior CMP warrant the Town to consider a new CMP or revisions to portions of the existing CMP at this time since economic and social impacts and trends may have rendered assumptions and recommendations in the prior CMP in need of review and revision. A proper Town Comprehensive Plan would include various elements at the level of detail adapted to the requirements of the Town that would provide for the goal of the Town for smart and sustainable land use. This general statement of goals for smart sustainable land use in the Town requires that specific objectives, principles, policies and standards both in the immediate and long range development of the Town are necessary in considering the need for open space, addressing appropriately regional needs, the existing and proposed location and intensity of land uses, the conservation of agricultural uses, the historic and culture resources, natural resources and sensitive environmental areas; the consideration of population, demographic and socio-economic trends and future projections including the community character as well as the need to review appropriate transportation facilities, public and private utilities and infrastructure, the existing housing resources and future housing needs, including affordable housing and the other factors that are required to be reviewed in any CMP and the Town needs to undertake a comprehensive review so that its current CMP reflects all requirements of law and best land use practices.

- C. The Town Board found that factors in connection with development or potential development in the Town as well as the potential development of a land within the surrounding areas may have a significant impact upon the health, safety and general welfare of the Town, its inhabitants and visitors, and upon existing uses, public services, traffic and the environment, in general.
- D. These circumstances required that the Town Board undertake, without delay, a focused review of the existing and anticipated commercial and/or residential uses in the Town and thereafter, an examination of the Town's zoning regulations that pertain to any such Districts that allow commercial and/or residential uses in order to determine whether these regulations should be amended or otherwise changed.
- E. The Town Board needs to retain the services of a Planning Consulting Firm to provide recommendations regarding updating the CMP, and to amend all required provision of in the Town Zoning Codes and Chapters and related land use regulations in a manner that is consistent with the most appropriate CMP, as may be amended, to encourage lawful smart sustainable development in the Town and the Town will consider the need for such a Planning Consultant to undertake actions together with Special Counsel for the Town.
- F. The Town Board hereby finds that the adoption of an extension of the existing Moratorium on the development of commercial and/or residential construction will best maintain the status quo during the study period in order to prevent interim development from frustrating the objectives of the study.

Section 2. Scope of An Extended Moratorium.

- A. Extension of the Moratorium on the issuance of any and all residential building permits and other actions: Except as provided herein at Paragraph 2(D), no building permit application for residential construction shall be accepted, and no pending building permit Application shall be further processed or approved, and no suspended or revoked Building Permit shall be reinstated for uses located within the Town except in accordance with this Local Law.
- B. Extension of the Moratorium on actions by the Town Board and Planning Board: The Town Board and Planning Board shall not process, hear, rehear, approve or sign any new or pending preliminary or final site plan, preliminary or final subdivision, special permit, variance or other land use application or permit which relates directly or indirectly to residential construction, including but not limited to any grading permit, erosion and sediment control permit, wetland permit, sewer connection permit, floodplain development permit, water connection permit, which may be granted in association with commercial and/or residential construction.
- C. Extension of the Moratorium and provisions of Town Law: To the extent that any provision of New York State Town Law imposes a time frame for action by a municipal entity, board or body so that a default approval will result from any inaction, the time

for any action required by any Town Board, Body, Agency or other entity shall be and is hereby extended until this Moratorium and any as well as all extensions thereof have expired and have not been extended by the Town Board. Therefore, no default approval shall be deemed to have taken place with regard to any application for any approval concerning land use development by reason of this Moratorium being in effect. Should any New York State Law preempt this provision, then this Local Law shall be deemed to constitute a denial without prejudice of any application or relief sought by any land use applicant or entity with said application or relief being deemed as ready for resubmission and reconsideration ninety (90) days after the date of the expiration of any and all moratorium or extension thereof.

D. Any of the following activities shall be permitted to be undertaken notwithstanding this Local Law:

- (1) Construction of a private garage. Said building shall not be used for any other purpose than the storage of automotive vehicles;
- (2) Construction of outdoor decks, sidewalks, or porches;
- (3) Construction of outdoor swimming pools;
- (4) Installation of fences;
- (5) Interior or exterior remodeling of a single family detached residential dwelling in existence and with a valid certificate of occupancy as of the effective date this local law, which does not involve any change of use or increase the size of the building, including but not limited to window replacement, door replacement, plumbing improvements, new siding, removal of interior walls, and similar improvements;
- (6) Installation or removal of home heating oil or propane tanks, in accordance with all applicable laws;
- (7) Repair, involving the removal and installation of an individual well or in-ground septic system, for a dwelling in existence and with a valid certificate of occupancy as of the effective date of this law;
- (8) Other minor improvements to dwellings or residential lots with an existing certificate of occupancy;
- (9) All residential construction and/or projects that have obtained Final Site Plan approval and/or Final Subdivision approval;
- (10) Any Building Permit applications for single-family homes that in the determination of the Building Inspector comply with all current New York State Codes Rules and Regulations for a single-family residential unit;
- (11) The installation of solar energy systems in compliance with the Town of Blooming Grove Solar Law;
- (12) All pending applications before the Zoning Board of Appeals are exempt from the Moratorium Law as well as any future Zoning Board of Appeals applications involving single-family residential units;
- (13) All cell tower applications involving only co-location or modification with change of superstructure, but not exempting cell tower application involving constructing a new cell tower;

(14) Commercial development proposals located in the Non-Nuisance Industrial (NNI) Zoning District. This exemption will take effect upon the adoption of the local law enacting the NNI district.

Section 3. Hardship review.

A. The Town Board may vary from the Moratorium imposed in Subsection 2 hereof if it determines, in its absolute discretion that granting such relief is consistent with the health, safety and general welfare of its inhabitants of the Town and their property and in harmony with the spirit and purposes of this Local Law. Any such variance by the Town Board may contain conditions based upon appropriate criteria, including but not limited to, the criteria set forth below.

B. When the Town Board considers such a variance as set forth herein at § 3(A) from the Moratorium Law, it should consider the following:

(1) In considering a variance, the Town Board may request the following information in order to render a decision:

(a) studies, reports, resolutions of preliminary and/or final approval, issued with or without conditions;

(b) any SEQRA documents and findings statement, Negative Declaration with or without conditions, including generic or supplemental environmental impact statements which may have cumulatively evaluated the impacts associated with certain land use applications;

(c) any special exception permit plan, site plan or subdivision plan, and map notes; all representations of the developer/applicant with regard to the dimensional standards of the zoning district within which the development is located, including but not limited to lot coverage, impervious surface coverage, residential building size, occupancy and other design parameters which served as the basis for SEQRA review, Stormwater Pollution Prevention Plan (SWPPP) review, and infrastructure approval and design, including methods of water supply, wastewater disposal, stormwater control, drainage, and transportation approvals;

(d) any violations which have been issued, and the status of same;

(e) any other related documents upon which the Planning Board or Zoning Board of Appeals relied in issuing an approval, and whether a variance issued from the Moratorium Law will be issued consistent with all resolutions of approval and SEQRA findings;

(f) the status of other agency permits and approvals, and whether those approvals or permits, if not issued, will be issued during the time period established by the Moratorium Law. The Town Board may require that the developer/applicant submit evidence that the approval or permit will be issued during the Moratorium time period;

(g) whether the developer/applicant is requesting a variance from this Moratorium Law for a project which proposes to vary from, or does not meet all previous decisions rendered by the Planning Board or Zoning Board of Appeals.

(2) It shall be the obligation of the developer/applicant to furnish these documents to the Town Board during the appeal process. The Town Board shall specifically consider, among other factors: whether the proposed land use or development is and will continue to be consistent with and comply with all previous decisions and findings; and, whether the developer/applicant is presently in front of the Planning Board or Zoning Board of Appeals requesting a waiver from any previous approval or finding, and the type of waiver being sought.

(3) The Town Board may limit a variance from the development Moratorium to specific prescribed activities, including but not limited to, activities which allow a developer/applicant to meet any conditions to remediate a violation.

C. An application for variance for this Moratorium shall be made by the applicant supplying to the Town Clerk not more than sixty (60) after enactment of this Moratorium in a Verified Petition signed by the owner of the subject property and any applicant for Town approvals setting forth all of the information required pursuant to Section 3(B) herein together with such additional information that the applicant or property owner seeking a variance desires to obtain from the Town Board. Within fifteen (15) days from receipt of said Verified Petition by the Town Clerk, the Town Clerk shall cause a Public Hearing Notice to be published providing for a Public Hearing no less than thirty (30) days after the application for a variance is received by the Town Clerk, but in no event more than sixty (60) days after the application for a variance is received by the Town Clerk. The applicant shall have an opportunity to produce such evidence, documents and call witnesses in support of the application for a variance from this Moratorium at the time of the Public Hearing established by the Town Board. No more than thirty (30) days after the close of the Public Hearing the Town Board shall act to either grant, deny or otherwise consider the application for a variance unless said time to act is extended by consent of the applicant for a variance.

Section 4. Application of Law to existing land use provisions.

This Local Law shall supersede any and all Town Law or other provisions of law rule or regulation that require specific action upon an application before the Planning Board or Zoning Board of Appeals. This Moratorium is being adopted by Local Law, using Municipal Home Rule Law procedures and this Moratorium suspends any subdivision approval time requirements and also supersedes and suspends any "default approval" provision of the Subdivision statutes of the Town Law or any other applicable laws. This Moratorium supersedes any Town Law or Town Code provisions to the contrary that require any specific action on an application by any Town Board, Planning Board, Zoning Board of Appeals or other land use Boards within the Town. This Moratorium Law also supersedes any New York State or Local Laws, rules or regulations pertaining to the grant of any variance authority by the Zoning Board of Appeals, it being the intention of this Local Law that any grant of variances or other relief to any other Boards or bodies than this Town Board is hereby superseded by this Local Law so as to vest any such variance or other approval solely in the Town Board pursuant to this Local Law. This Local Law shall be in supplement to and not in derogation of the goals of the prior Local Law that enacted the Moratorium.

Section 5. Casualty exemption.

The provisions of this Local Law shall not apply to the restoration or replacement of any building or portion thereof which shall have been damaged or destroyed by fire or other casualty. This exemption, however, shall not be applicable to the restoration or replacement of any building which, prior to the effective date of this Local Law, shall have constituted a non-conforming building under the Zoning Code of the Town, nor shall this Subsection 4 in any way prevent the extinguishment of any non-conforming use as a result of casualty destruction.

Section 6. Expiration of Moratorium.

This Local Law shall expire without further action of the Town Board six (6) months following the effective date hereof and thereafter shall be of no force or effect. However, if it appears that any required review and study referred to hereinabove will not be completed within six (6) months from the effective date of this Local Law, the Town Board may, by Local Law, extend the period of this Moratorium for an additional three (3) months or such other and further time period that is reasonable in scope and duration.

Section 7. State Environmental Quality Review Act.

Pursuant to 6 NYCRR 617.5 (30) this Local Law is classified as Type II action which requires no further review under the State Environmental Quality Review Act.

Section 8. Severability.

If any clause, sentence, paragraph, section, or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part hereof directly involved in the controversy in which such judgment shall have been rendered.

Section 9. Effective date.

This Local Law shall become effective immediately upon being filed with the Secretary of State.

RESOLUTION

A Meeting of the Town Board of the Town of Blooming Grove, New York was convened on November 8, 2017, at 7:40 p.m.

The following Resolution was duly
offered and seconded to wit:

RESOLUTION ADOPTING A LOCAL LAW AMENDING THE MORATORIUM ON THE DEVELOPMENT OF ANY AND ALL PROPERTY IN THE TOWN OF BLOOMING GROVE, NEW YORK

WHEREAS, the Town Board of the Incorporated Town of Blooming Grove, New York ("Town") enacted Local Law No. 9 of 2016, titled, "A Local Law Implementing a Moratorium on the Development of Any and All Property of the Town of Blooming Grove, New York," after determining that there was a critical and compelling need, in the public interest as set forth herein, to impose a moratorium on the development of all residential property in the Town and the Town hereby finds a need to extend said Moratorium; and

WHEREAS, the Town Board retained the services of a Planning Consulting Firm to provide recommendations regarding the need to update the Comprehensive Master Plan ("CMP"), and to amend the zoning chapter and related land use regulations in a manner that is consistent with the CMP, as may be amended, to encourage lawful smart sustainable development in the Town and the Firm having undertaken such work, but requires additional time to complete said services; and

WHEREAS, the Town undertook the CMP review and caused said review to focus initially on the properties most suited to commercial and industrial use because such use had been substantially reduced when the Village of South Blooming Grove was formed; and

WHEREAS, the CPM review was diligently pursued, the Town Board determined that additional time was needed to complete the analysis of the impact of the formation of South Blooming Grove on the Town's inventory of land suitable for commercial and industrial use; and

WHEREAS, Local Law No. 2 of 2017 extended the Moratorium for six (6) months from March 2017 through September 2017 and authorized an additional extension for a period of three (3) months or for such other and further time period that is reasonable in scope and duration if it appears that the required review and study will not be completed within the time period provided to conduct such review and study; and

WHEREAS, on September 12, 2017, after a duly noticed public hearing, the Town Board enacted Local Law as Local Law No. 9 of 2017, titled "A Local Law Implementing an Extension of the Moratorium on the Development of Any and All Property in the Town of Blooming Grove, New York," which local law extended the Moratorium for an additional four (4) month through January 12, 2018; and

WHEREAS, the Town Board finds and determines that several amendments to the zoning law have been studied and implemented during the Moratorium, which zoning amendments are consistent with the 2005 Comprehensive Plan and which implement zoning safeguards upon those applications for land use development on land affected by those certain amendments; and

WHEREAS, the Town Board further finds and determines that it is right and proper to grant relief to property owners who seek land use approvals for property governed by the newly adopted zoning regulations in the form of a Local Law amending the Moratorium; and

WHEREAS, on October 31, 2017, the proposed Local Law amending the Moratorium was referred to the Orange County Planning Department pursuant to GML 239-m, which responded by letter dated November 21, 2017 that the proposed law was a local determination; and

WHEREAS, on November 14, 2017, a duly noticed public hearing was held on said Local Law amending the Moratorium.

NOW, THEREFORE, be it RESOLVED that:

1. The above "WHEREAS" clauses are incorporated herein as if set forth fully herein.
2. The Town Board hereby confirms that the adoption of the Local Law amending the Moratorium to grant relief to property owners seeking land use approvals for property governed by newly enacted zoning regulations and that such relief constitutes a Type II action and is determined not to have a significant effect on the environment.
3. The Town Board has previously accepted and incorporated all comments from all reviews required to be undertaken pursuant to applicable law.
4. The Town Board hereby adopts said amended Local Law as Local Law No. _____ of 2017 entitled "A Local Law Implementing a Moratorium on the Development of Any and All Property of the Town of Blooming Grove, New York," a copy of which is attached hereto and made a part hereof, and the Town Clerk be and she hereby is directed to enter said Local Law in the minutes of this meeting and to enter said Local Law in the Local Law Book of the Town, and to give due notice of the adoption of said Local Law to the Secretary of State.
5. This Resolution shall take effect immediately.

BE IT FURTHER RESOLVED, that the adoption of this Local Law amending the Moratorium be and hereby is adopted as Local Law No. 11 of 2017 of the Town of Blooming Grove on November 14, 2017.

On the motion of Councilman KyDon, seconded by Councilwoman Kiernan, the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yea	Nay	Abstain	Absent
Robert A. Fromaget, Supervisor	[✓]	[]	[]	[]
Johanna Kiernan, Deputy Supervisor	[✓]	[]	[]	[]
Ronald S. Jurain, Councilperson	[✓]	[]	[]	[]
Mark Levy, Councilperson	[]	[]	[]	[✓]
George KyDon, Councilperson	[✓]	[]	[]	[]

The Resolution was thereupon duly adopted.

Darlena Decker, Town Clerk of the Town of Blooming Grove, does hereby certify that the foregoing Resolution of the Town Board was filed in my office on the following date:

Darlena E. Decker 11-30-17

Signature and Date

Seal of the Town of Blooming Grove: