

**Local Law No. 7
of the year 2004
Town of Rochester**

A Local Law providing for the amendment of Town Code Section 140 Zoning.

BE IT ENACTED by the Town Board of the Town of Rochester as follows:

SECTION 1.

The Town Board hereby finds and determines that in order to protect and safeguard the Town of Rochester, its residents and their property, with respect to expenses incurred by the Town, in connection with the review of applications made to the Building Department, Planning Board, Zoning Board of Appeals and the Town Board and to assure that applicants proceed with work at their sites in a competent and workmanlike manner and in conformity with all applicable governmental codes, rules and regulations and, if appropriate, dedicate and convey highways or projects to the Town in a legally sufficient manner, it is essential for the Town to have competent professionals retained by the Town to review applications, plans, and designs and make recommendations to the appropriate board or department and to inspect the construction of improvements and to draft appropriate agreements with applicants, obtain, review and approve necessary securities, insurance and other legal documents, review proposed deeds and easements and to generally represent the Town with respect to legal disputes and issues with respect to applications, and that the cost of retaining such professionals should ultimately be paid by those who seek to profit from such developments rather than from general Town funds which are raised by assessments paid by taxpayers of the Town.

This local law is enacted under the authority of subparagraphs (a)(12) and (d)(3) of the Municipal Home Rule Law Section 10(1)(ii) and Municipal Home Rule Law Section 22. To the extent Town Law Sections 274-a, 276 and 277 do not authorize the Town Board or Town Planning Board to require the reimbursement to the Town of legal and engineering expenses incurred by the Town in connection with the review and consideration of application for subdivision approval and for the approval, amendment or extension of planned districts under the Town's zoning ordinance, it is the expressed intent of the Town Board to change and supersede such statutes. More particularly, such statutes do not authorize the deferral or withholding of such approvals in the event such expenses are not paid to the Town. It is the expressed intent of the Town Board to change and supersede Town Law, Sections 274-a, 276 and 277 to empower the Town to require such payment as a condition to such approvals.

SECTION 2.

In accordance with the purpose stated above, Section 140 of the Code of the Town of Rochester shall be amended to insert a new ARTICLE VI-A to read as follows:

Section 140- 30A. Fees and expenses:

- A. All application fees for special permits, variances, site plans, subdivisions and other matters of land use, planning and development which are brought before any agent or agency of the town of Rochester shall be in accordance with a table of fees for licenses and permits, which table shall be created by resolution of the Town Board with assistance of the Planning Board and shall be maintained on a current basis and from time to time modified or updated upon recommendation of the Planning Board or upon initiation of by the Town Board.
- B. 1. The Town Board, the Planning Board, the Zoning Board of Appeals and the Building Department are empowered to charge an applicant the reasonable and necessary expenses for professional fees incurred by any of those boards or the building department as a result of professional work required to be performed on behalf of any of said boards or the building department as a result of the filing of an application seeking approval by that board or the building department. For the purpose of this Section 140-30A Professionals shall include, but not be limited to, engineers, attorneys, planning consultants, architects, traffic consultants and noise consultants.

2. Simultaneously with the filing of an application for approval of a development and prior to the commencement of the review of the application the applicant or developer, as the case may be, shall deposit with the Town Supervisor a sum of money, as determined in sub section 9 of this section 140-30A, which sum shall be used to pay the costs incurred by the Town for consulting, engineering and legal services as described in this section.
3. Upon receipt of such sums, the Town Supervisor or his or her designee shall cause such monies to be placed in a separate non-interest bearing account in the name of the Town and shall keep a separate record of all such monies so deposited and the name of the applicant or developer and project for which such sums were deposited.
4. Upon receipt and approval by the Town Board of itemized vouchers from a professional for services rendered on behalf of the Town pertaining to the application, the Town Supervisor shall cause such vouchers to be paid out of the monies so deposited, and shall furnish copies of such vouchers to the applicant or developer at the same time such vouchers are submitted to the Town.
5. The Town Board shall review and audit all such vouchers and shall approve payment of only such professional fees as are reasonable in amount and necessarily incurred by the Town in connection with the review, consideration and approval of the application. For purpose of the foregoing, a fee or part thereof is reasonable in amount if it bears a reasonable relationship to the average charge by professionals to the Town for services performed in connection with the approval or construction of a similar application and in this regard the Town Board may take into consideration the magnitude of the application and any special conditions or considerations as the Town Board may deem relevant.
6. If at any time during or after the processing of such application or in the construction, inspection or acceptance of the proposed project there shall be insufficient monies on hand to the credit of such applicant or developer to pay the approved vouchers in full, or if it shall reasonably appear to the Town Supervisor, or his /her designee, that such monies will be insufficient to meet vouchers yet to be submitted, the Town Supervisor, or his or her designee, shall cause the applicant or developer to deposit additional sums as the Supervisor, or his or her designee, deems necessary or advisable in order to meet such expenses or anticipated expenses.
7. In the event that the applicant or developer fails to deposit such funds or such additional funds, the Town Supervisor, or his or her designee, shall notify as applicable, the Chairman of the Planning Board or Zoning Board of Appeals, Town Board and/or Town's Code Enforcement Officer of such failure, and any review, approval, building permit or certificates of occupancy may be withheld by the appropriate Board, officer or employee of the Town until such monies are deposited.
8. After final approval, acceptance and/or the issuance of a certificate of occupancy relating to any specific application, and after payment of all approved vouchers submitted regarding such development, any sums remaining on account to the credit of such applicant or developer shall be returned to such applicant or developer, along with a statement of the vouchers so paid.
9. The amount of the initial deposit for the various developments covered by this local law shall be as set forth in a schedule of deposits established from time to time, by resolution of the Town Board. Said schedule shall remain in effect and shall apply to all applicants and developers until amended or revised by subsequent resolution.
10. The deposits required by this local law shall be in addition to any application fees as may be required by other laws, rules, regulations or ordinances of the Town, and shall not be used to offset the Town's general expenses for professional services for the several Boards of the Town, nor its general administration expenses.

SECTION 3.

If any clause, sentence, paragraph, subdivision, 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 thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment is rendered.

SECTION 4.

This local law shall take effect upon filing in the office of the Secretary of State and the adoption of the initial table of fees by the Town Board.