

Amended 5/25/2022 for consideration 6/2/2022

Local Law 3 of 2022

**A LOCAL LAW PROVIDING FOR A MORATORIUM ON ACTIONS
SUBJECT TO BUILDING PERMITS, SITE PLAN, SPECIAL USE
PERMITS, OR SUBDIVISION REVIEW FOR A PERIOD OF
ONE-HUNDRED EIGHTY DAYS**

Presented by Supervisor Baden, Local Law 3 of 2022, as follows:

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

Section 1 TITLE

This local law shall be known as "Moratorium on Actions Subject to Building Permit, Site Plan, Special Use Permits, or Subdivision Review", or herein variably as just the "local law" or the "moratorium", each as the context thereof so admits or requires.

Section 2 AUTHORITY AND INTENT

- A. This local law is a police power and land use regulation. It is intended and is hereby declared to address matters of local concern.
- B. This local law is intended to be consistent with and adopted pursuant to the authority granted to the Town Board under the New York State Constitution and the laws of the State of New York, including but not limited to Town Law §§ 130 and 261, et seq., the New York State Constitution Article IX, Municipal Home Rule Law §10, and the Statute of Local Governments §10.
- C. Specifically, this local law is intended to supersede New York State Town Law §§ 267, 267-A, 267-B, 274-A, 274-B, 276, 277, 278, and 279.
- D. This local law shall supersede and suspend those provisions of the Town Code which require the Planning Board and the Town Code Enforcement officer to accept, process, and approve land use applications within certain statutory time periods.

Section 3 PURPOSE

- E. The Town Board of the Town of Rochester, Ulster County, New York, is vitally concerned with the effect of its present Zoning and Subdivision Laws on the growth, increased development, environmental sensitivity, health, safety and general welfare of the Town.
- F. The Town Board wishes to place a moratorium on consideration and approval of residential and commercial projects subject to Building Permit, Site Plan, Special Use Permits, or Subdivision Review pending the completion and adoption of amendments to Chapters 125 and 140 of the Code of the Town of Rochester, which Codes do and will have further

recommendations from the Town Planning Board and Ulster County Planning Board pertaining to land use and development within the Town. The Town Board duly finds and declares that after years of comprehensive planning and public input and meetings related to the same, it is crucial to maintain the status quo relative to land use developments and subdivisions during the "home stretch" of finalizing and adopting the final updated sections of the Zoning and Subdivision codes, particularly for the resource and land use planning that is central and vital to public health, safety, land values, and rural character of a largely residentially-oriented, small town in the Catskill and Shawangunk Mountain and Rondout Valley area of upstate New York.

- G. The Town desires to consider any recommended land use regulations that guide future residential and commercial land use developments in order to ensure that all projects are allowed, sited, and reviewed in congruence with Town's vision of the community, and to ensure that impacts are managed by appropriate land use regulations and resource protection laws and requirements. These may include measures that guide not only development within a single parcel, but also shape the nature and distribution of development within the boundaries of the Town in order to promote the goals and aspirations of the community, as identified in the six Plan Elements of the 2006 adopted Comprehensive Plan. In particular, the Environmental Quality, Land Use, Economic Development, Community Character, Infrastructure, and Government Services Plan Elements. The Comprehensive Plan states "This Comprehensive Plan is intended to ensure the Town of Rochester has policies in place so that the property rights of landowners and the community are protected by a balanced set of standards that preserve the rights to use land as desired and address the impacts of such development on adjacent landowners and their property rights.
- H. Having in place a 6-month window to finalize and to consider zoning or site planning and subdivision updates, for the purposes of enhancing and implementing the vision of the Comprehensive Plan, including regulating where certain land uses may be sited, is therefore deemed to be vital to the public health, safety, and interests of the Town of Rochester and its citizens, visitors, and surrounding communities and natural resources, whether the Rondout Valley proper or the remarkable inventories of agricultural land, open space, and scenic views this rural part of New York preserves and seeks to protect.

Section 4 FINDINGS

The Rochester Town Board finds, determines and makes the following declarations:

- A. Actions of the types subject to discretionary review in and under the Town of Rochester's Site Plan Review or Subdivision Local Laws and procedures, (hereinafter "Actions") may affect the overall nature and patterns of development within the Town.
- B. Unchecked and non-regulated Actions create unreasonable risks pertaining to the loss of important local resources of value, as well as create potential conflicts between residences and other uses, and these potential losses and conflicts require consideration and mitigation to preserve desired characteristics, resources, and harmonies between adjacent uses in a rural environment.
- C. The Town Board is concerned that protection of the Town's interests, and the public health and welfare interests so implicated, could or would be damaged or subverted if Actions (as

defined in Section 5 hereunder) were to be entertained or approved before the Codes are adopted and the Town Board is able to consider modifications of or additions to current regulatory measures reasonably necessary or desirable to address land use and public health and welfare issues. Accordingly, to address these issues, and to protect the public health, safety and welfare, it is the intention of the Town Board to stay the review or approval of Actions during the limited time the Town needs to complete the update to the 2009 and 2014 updates, including in order to assess whether the Town's existing land use regulations support the community vision expressed in the 2006 Comprehensive Plan.

- D. The Town of Rochester's 2006 Comprehensive Plan identifies the following goals:
1. Environmental Quality
Strike a balance so that growth can take place in a way that protects the environmental resources we all need to live.
 2. Land Use
Shape future development in a balanced manner so that it:
 - Minimizes tax increases needed to support new growth.
 - Maximizes the ability of people of all means to find an affordable place to live in Rochester by providing for a range of housing choices and lot sizes.
 - Promotes residential development sited and scaled to blend in with the historic character of Rochester.
 3. Economic Development
Enhance both the tax base and local job opportunities by supporting a diverse economic base that includes all current businesses and trades, tourism, agriculture, services and manufacturing all sited and scaled to blend in with the historic character of Rochester.
 4. Community Character
Recognize and respond to the wide variety of individuals, enterprises and organizations that help define Rochester's character. Shape growth so that it contributes to and strengthens the qualities that make Rochester unique.
 5. Infrastructure
Minimize costs associated with constructing and maintaining public infrastructure needed to accommodate growth.
 6. Government Services
Provide effective and cost-efficient services for the residents of the Town.
- E. In 2009, the Town of Rochester adopted new Subdivision and Zoning Codes with Local Laws 4 and 6 of 2009. These were repealed with Local Laws 1 and 2 of 2014, with substantial change being made to both codes with the adopted local laws. Since that time, the Zoning Code has been amended with LL3-2016, LL3-2018, LL4-2019, and LL3-2021.
- F. The Town of Rochester commissioned a study resulting in the document "Town of Rochester Open Space Inventory", dated January 2016.

- G. The Town of Rochester received a grant from the Hudson Valley Estuary program which funded a study resulting in the document "Town of Rochester Natural Heritage Plan", dated January 12, 2018.
- H. The Town of Rochester Town Board formed the Comprehensive Plan and Land Use Code Review Committee in 2020 which actively worked on reviewing and making recommendations of updating the Town's Codes to achieve those goals and to identify the types of land use and resource regulations which may best implement the shared community vision of the Town as will be guided and implemented through the Comprehensive Plan.
- I. In the period from January 2021 through current date the Town of Rochester Planning Board has experienced a significant increase in applications. During this period 29 applications for subdivision, 18 applications for Lot Improvement, and 10 applications for Special Use/Site Plan review have been presented.
- J. In the period from January 2021 through current date the Town of Rochester Building Department has experienced a significant increase in applications. During this period 846 applications, 314 municipal searches, and 106 short term rental applications have been presented.
- K. It is anticipated that the Town Board will complete adoption of local laws updating the Zoning and Subdivision Codes of the Town within one hundred eighty (180) days of the effective date of this local law. This will allow the Town Board to assess whether existing land use regulations are sufficient to support the vision of the Town as reflected in the Comprehensive Plan with respect to Actions, including residential and non-residential subdivisions and projects as proposed to develop and change the characteristics of, intensity of use of, and primary uses of both small and large parcels of land throughout the Town.

Section 5 PROHIBITED ACTIONS

- A. For a period of one hundred eighty (180) days from the effective date of this local law, the Town Board hereby declares a moratorium prohibiting each of the following "Actions" in the Town, regardless of the submittal or receipt of any application prior to the effective date of this local law. Neither the Planning Board nor the Town's Code Enforcement Office shall accept, process, review or approve any Action, unless such Action is exempt under Section 6, hereunder.
- B. The time period set forth in this section may be reduced by the Town Board, by resolution, upon a determination that the intent and purpose of this Local Law has been satisfied.
- C. The time period set forth in this section may be extended by two additional periods of up to three (3) months, by resolution of the Town Board, upon a finding of necessity for such extension.
- D. The consideration by the Planning Board of any Site Plan or Special Use Permit, or the review thereof, of any plan containing existing or proposed structures or combination of structures larger than 4,000 square feet for or in relation to any Action (whether a new land use proposal, or a modification that triggers review and is therefore an "Action"), including any waivers, appeals, or variance reviews by such board.

- E. The consideration by the Planning Board of any Preliminary or Final Plat for any land subdivision or the review thereof dividing a single parcel into three or more parcels, for or in relation to any Action, including any waivers, appeals, or variance reviews by such board.
- F. Acceptance, consideration, preliminary approval or final approval by the Town of Rochester Zoning Board of Appeals of any Action or any application for a waiver or variance in connection with any Actions prohibited herein (such authority being exclusively delegated to the Town Board under§ 7, below).
- G. The issuance of any permit by the Town of Rochester for highway utility work in connection with any Actions prohibited in or by this local law, and the issuance of ground disturbance permits, SWPPP reviews or approvals, or building permits or approvals in relation to any Actions prohibited in or by this local law.

Section 6 EXEMPTIONS

- A. Notwithstanding the foregoing, this local law shall not apply to any land development project (Including variances) for which an application was made and has been rendered a favorable decision by the Town of Rochester Planning Board or Town of Rochester Zoning Board of Appeals, on or before adoption of this local law.
- B. Any permit approved by the Building Department on or before adoption of this local law
- C. The following Actions are exempt from this moratorium and the terms and requirements of this local law:
 - 1. Any Action that has been presented, discussed, or reviewed on an agenda at a meeting of the Town of Rochester Planning Board for review, prior to the effective date of this local law.
 - 2. Any application to the Town Board for inclusion in the Economic Enterprise Overlay District.
 - 3. Any traditional Agricultural Action that is protected under Article 25-AA of the Agriculture and Markets Law by being exempt under the Town of Rochester's subdivision or site plan review procedures and laws.
 - 4. Traditional single-family and two-family residences and accessory buildings that are to be constructed and emplaced upon an existing lot that are of a size, character, and design as to not trigger review under the Town of Rochester's subdivision, site plan, or special use review procedures and laws.
 - 5. Any permit application for an Accessory Dwelling Unit.
 - 6. Any application which is determined classified as an accessory use or accessory structure by the Code Enforcement Officer.

7. Any other ministerial building permit or other permit action made to the Code Enforcement Office that does not trigger review under Town of Rochester's subdivision or site plan review procedures and laws.
8. Any appeal or review seeking a variance or waiver in relation to an Action that has already been approved and which meets the requirements of Sections 6, as applicable, above.
9. Any Action or matter for which a waiver is granted under Section 7, hereunder.

Section 7 WAIVERS

- A. Should any applicant or owner of property affected by this moratorium suffer an extraordinary hardship as a result of the temporary requirements or limitations set forth in this local law, then said applicant or owner may apply to the Town Board in writing for relief from strict compliance with this moratorium (a "Waiver") upon submission of proof of such extraordinary hardship and the meeting of the standards and requirements set forth in this local law. For the purpose of this moratorium, an extraordinary hardship shall not be the mere delay in being able to apply for some determination or approval related to an Action during the period of the moratorium. Any applicant and any property owner may apply to the Town Board for a Waiver of or from any one or more of the requirements or restrictions set forth in this local law and, upon good cause shown, the Town Board may grant such relief, or so much relief as said Board may determine to be necessary and appropriate in accordance with the application and review criteria set forth in this local law.
- B. Substantive requirements: No Waiver seeking relief or partial relief from the requirements and restrictions of this moratorium shall be granted unless the Town Board shall specifically find and determine, and set forth in its resolution granting such Waiver in whole or in part, that:
 1. The failure to grant a Waiver will cause the petitioner extraordinary hardship, and such hardship is substantially greater than any harm to the general public welfare resulting from the Waiver (if granted in whole or in part). In considering this factor, the Town Board may consider the unique nature of the land in question, including whether the site of the proposed Action is affected by an exceptional topographic or other naturally occurring conditions as supports a Waiver.
 2. The granting of a Waiver will have no clear, adverse effect upon the goals or objectives being now undertaken by Comprehensive Planning and community wide efforts to protect and preserve the essential character and important resources of the Town, including potentially deleterious or irreversible impacts to open spaces, agricultural resources and farming, and wildlife corridors and other significant ecological resources.
 3. The Waiver is sought for an Action that is, or which by imposition of conditions or voluntary land covenants and restrictions can be, harmonious with neighboring uses and the community planning efforts currently underway.
 4. The extraordinary hardship is not the result of any delay, action, or inaction by the applicant, the property owner, or any predecessors-in interest, and that such alleged

hardship has not been self-created. In considering this factor, the Town Board may consider whether the need for a Waiver is based in whole or in part upon a lack of maintenance or repair of the property or improvements thereupon, including consideration of the extent to which the existing improvements are aged, decrepit, obsolete, run-down, outmoded, or in a state of disrepair, and further including whether financial hardship has been materially promoted by such lack of maintenance, repair, or the property condition and causes thereof.

5. The impact and harm to applicant in denying a Waiver will not be outweighed by the benefit to the community in preserving the status quo pending completion of its Comprehensive Plan, and in considering this factor the Town Board may consider the applicant's or land owner's vested rights and monetary investment "in the ground", but such rights or investments shall be only one factor in the balancing test of hardships and harms undertaken by the Town Board in consideration of this finding and factor. The costs and expenses of a Waiver application shall not be considered as, or be a part of, any monetary investment arguments, calculations, harms, or hardships.
6. The application for a Waiver is and was substantially complete at the time of filing and at the time the notice of public hearing was posted, such that all parties and the Town Board had a full and fair opportunity to consider the facts, bases, and arguments upon which the Waiver application and any Waiver approval was based. In evaluating this factor, the Town Board may consider whether the applicant advanced new theories, facts, or arguments not set forth in the application as may have unduly and adversely impacted the Town Board's ability to conduct a full and fair hearing, as well as the rights of participants and witnesses to prepare evidence and address the application and Waiver request as submitted.
7. No relief granted in respect of the Waiver is greater than the relief requested by the applicant in the petition, and no such relief is greater than the minimum amount of relief necessary to alleviate any extraordinary hardship, should a Waiver be granted in whole or in part.

C. Procedure:

1. Upon submission of a written application to the Town Clerk by any person seeking a Waiver, the Town Board shall schedule a public hearing within 45 days, upon 10-days published and posted notice, with due and similar notice to such applicant by personal service or by mailing notice thereof to the address of the applicant, which shall be set forth in such application.
2. An application shall consist of all general materials required for a general sketch plan meeting or, if desirable or beneficial in the opinion of the applicant, such materials as would be necessary to allow for a preliminary site plan or subdivision plat review, together with a description of the proposed land subdivision or proposed land uses. The applicant shall also include a delineation of the issues, facts, conditions, and features, or mitigation of impact features, as will be proposed in such Action as address the proofs and evidence needed to support the required findings supporting a full or partial Waiver. The applicant shall be solely responsible to determine the extent to which factual and evidentiary matters are alleged and relevantly explained in the

application seeking a Waiver. All applications shall contain a subscribed certification of the applicant stating that the foregoing application and its exhibits constitute the applicant's full and complete application and set forth all bases upon which applicant relies upon for a Waiver.

3. At said public hearing, applicant and all other persons shall be entitled to submit evidence and have an opportunity to be heard, and the Town Board shall hear and accept all evidence regardless of formal rules of evidence, instead giving weight to such testimony and evidence as it deems worthy of relevance and reliability.
 4. Within 30 days of the close of the public hearing, or 45 days of the date of the first public hearing, whichever shall first arrive, the Town Board shall issue its written findings and decision and grant the Waiver in whole or in part, with or without conditions, or deny the same. Denial without prejudice to re-applying is proper where the basis for denial is based upon an incomplete application, or applicant advancing arguments and facts in support of the finding of a substantial hardship that were not summarily described in the application, which shall also be deemed an incomplete application. The fact that a hearing was conducted or concluded is not relevant to, or an acknowledgement that, any application was substantially complete at any time.
- D. All determinations as to the criteria and findings set forth for Waivers shall be and be deemed discretionary actions in respect of a legislative determination by the Town Board, and all determinations shall be subject only to review in accord with Article 78 of the New York Civil Practice Law and Rules.
- E. Approving a Waiver in whole or in part is not an approval of the Action, which must still undergo formal review, including environmental reviews as required under Article 8 of the New York Environmental Conservation Law (including its implementing regulations).
- F. All applicants and other persons proceeding with and submitting applications, documents, surveys, site development designs, or other documents in support of applications, or evidence or testimony provided or planned to be submitted at any hearing(s), shall be incurred and undertaken at such applicant's or person's sole cost and expense, including all surveying, engineering, planning, and legal expenses, and other professional fees and expenses, together with all costs and other expenses generally. The results of any Waiver application entitle neither the Town nor any other applicant, party, or participant to recover any portion of such fees, costs, or expenses.

Section 8 SEQRA DETERMINATION

The Town Board hereby determines that the adoption of this local law is a Type II action under 6 NYCRR 617.5(c) {36} and that further environmental review under the NYS Environmental Quality Review Act (SEQRA) is not required.

Section 9 VALIDITY AND CONFLICTS

For and during the stated term of this legislation, unless the stated term thereof shall be modified or abridged by the Town Board, this moratorium shall take precedence over and shall control over any contradictory local law, ordinance, regulation or Code provision.

Section 10 LIMITATION UPON TOWN LIABILITY

The Town, and its officers, employees, and agents shall not be liable or responsible for any injuries to persons or damages to property due to the Town's actions, or failures to act under or pursuant to this local law unless it is proven to a reasonable degree of certainty that such alleged act of, or failure to act by, the Town was a primary cause of such injury, loss, or damage and was principally caused by a willful or intentional act of the Town, its officers and agents. This provision shall be construed and applied to the maximum extent permitted by law, does not waive any sovereign or governmental immunity of the Town, and does not create any theory or claim of liability where none exists at law or in equity.

Section 11 ARTICLE 78

Any person aggrieved by any decision or determination of the Town Board in respect of the application of this local law or the issuance or denial of a Waiver hereunder, may have said decision or determination reviewed by the Supreme Court in the manner provided by Article 78 of the Civil Practice Law and Rules. This provision shall not, however, expand the jurisdiction, scope, or applicability of said Article 78, create a right of standing where such right does not otherwise exist, or waive any claims, rights, or defenses the Town may have regarding questions of law or fact pertaining to the judicial and legal concepts of ripeness, standing, timeliness, governmental immunities, or of any other matter. Further, all administrative remedies and appeals must be fully exhausted before any Person may commence any proceeding under said Article 78.

Section 12 ENFORCEMENT

This local Law shall be enforced by the Code Enforcement Officer or the temporary replacement. It shall be the duty of said Officer to advise the Town Board of all matters pertaining to the enforcement of this law and to keep all necessary records appropriate to same.

Section 13 VIOLATION

Any persons violating any provisions of this Local Law shall be guilty of an offense, and upon conviction thereof be punished by a fine not exceeding one-thousand dollars (\$1,000.00) or imprisonment not to exceed six (6) months, or both. For the purposes of conferring jurisdiction upon the Court, violations of this ordinance shall be deemed a misdemeanor, and for such purpose the laws relating to misdemeanors shall apply to such violations for procedural matters. Every day's continued violation after notice shall constitute a separate additional violation. In addition, the Town Board may also maintain an action or proceeding, in the name of the Town Board, in a Court of competent Jurisdiction to compel compliance with or to restrain by Injunction the violation of this Local Law.

Section 14 EFFECTIVE DATE

This Local Law shall become effective upon filing in the office of the Secretary of State, pursuant to the Municipal Home Rule Law.