

# 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.

FILED  
STATE RECORDS

DEC 16 2018

County  City  Town  Village  
(Select one.)

of Chatham

DEPARTMENT OF STATE

Local Law No. 3 of the year 2016

A local law To amend section 138 of the Code of the Town of Chatham relating to the imposition of  
(Insert Title)  
fees by the Town Board, Planning Board, Zoning Board of Appeals, or any other town  
board, agency or permitting authority

Be it enacted by the \_\_\_\_\_ of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one.)

of Chatham

as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(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 local law No. 3 of 202016 of the (County)(City)(Town)(Village) of Chatham was duly passed by the Town Board on August 18 2016, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

**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) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted *(Elective Chief Executive Officer\*)* 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) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. *(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) *(Name of Legislative Body)* (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 \_\_\_\_\_ December 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.

# Local Law Filing

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Town of Chatham

Local Law No. 3 of the year 2016

A local law to amend § 138-2 of the Code of the Town of Chatham (adopted by Local Law No. 1-1998) relating to the imposition of fees by the Town Board, Planning Board, Zoning Board of Appeals, or any other town board, agency, or permitting authority.

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

## **Section I. Legislative Findings, Intent, and Purpose:**

The Town Board hereby finds and determines that in order to protect and safeguard the Town of Chatham, its residents and their property, with respect to certain land developments within the Town, all buildings, highways, drainage facilities, sanitary sewer facilities, other utilities and parks within said developments should be designed and constructed in a competent and workmanlike manner and in conformity with all applicable governmental codes, rules and regulations and dedicated and conveyed to the Town in a legally sufficient manner, that in order to assure the foregoing, it is essential for the Town to have competent engineers retained by the Town to review and approve plans and designs, make recommendations to the Town Board, Planning Board, and Zoning Board of Appeals, to inspect the construction of highways, drainage, sewer, other facilities and parks to be dedicated to the Town, and to recommend their acceptance by the Town, and to have competent attorneys retained by the Town to negotiate and draft appropriate agreements with developers, obtain, review and approve necessary securities, insurance and other legal documents, review proposed deeds and easements to assure the Town is obtaining good and proper title and to generally represent the Town with respect to legal disputes and issues with respect to developments, and that the cost of retaining such competent engineers and attorneys 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 265, 267, 267-a, 267-b, 271, 274-a, 274-b, 276, 277, 278, 279, 280-a, 283, or any other provision of law does not specifically authorize the Town Board, Town Planning Board or Zoning Board of Appeals 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 Law, 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 265, 267, 267-a, 267-b, 271, 274-a, 274-b, 276, 277, 278, 279, 280-a, and 283 to empower the Town to require such payment as a condition to such approvals. It is further the expressed intent of the Town Board to repeal the current § 138-2 of the Code of the Town of Chatham (adopted by Local Law No. 1-1998) relating to the imposition of fees by the Town Board, Planning Board, Zoning Board of Appeals, or any other town board, agency, or permitting authority, and to replace it with the following.

## **Section II. Establishment of Fee Schedule:**

The Town Board does hereby declare that a comprehensive schedule of fees to be paid to the Town of Chatham upon the filing of certain applications for permits or other certificates for activities taken or approved by the Town Board, Planning Board, Zoning Board of Appeals, Building Inspector, Town Engineer, and Town Clerk shall be established by resolution of the Town Board from time to time.

## **Section III. Land Use Application Fees:**

A. A schedule of planning, zoning, and building application fees shall be established by resolution of the Town Board from time to time. All such fees in effect at the time of adoption of this chapter shall remain in effect until such time as those applications fees are modified by resolution of the Town Board.

B. The application fees established pursuant to Subsection A above shall be deemed to be the minimum fee to be charged and any additional costs and expenses actually incurred by the Town for professional consultants, inspections (as well as all other non-ministerial expenses) shall be paid by the applicant in accordance with Section IV and other laws, resolutions, provision, regulations, and codes of the Town.

C. All reimbursements required by Section IV shall be in addition to any application, inspection, or other fees as may be required by any other laws, resolutions, provisions, regulations, or codes of the Town and shall not be used to offset the Town's general expenses of engineering, legal, and planning services for the several boards of the Town nor offset the Town's general expenses.

D. Any fee established elsewhere in this Code which is not inconsistent with a fee established pursuant to this chapter shall remain effective.

E. This chapter and the schedule of application and other fees shall be filed with the Town Clerk. The failure to file any fee schedule revision with the Town Clerk shall not affect the obligation to pay such fee.

## **Section IV. Reimbursement of Costs and Expenses:**

A. The applicant for approval of any land use or land development proposal shall reimburse the Town for the reasonable and necessary engineering, legal, and planning fees and expenses incurred by the Town in connection with the review and/or approval of the application. Said fees and expenses are referred to herein as escrow fees or deposits. Reimbursement of the Town's consultant expenses shall be made in accordance with this chapter. For the purposes of

this chapter, the term "land use or development" shall include, but not be limited to, designation as an open development area, a subdivision, lot line change, site plan, special permit, wetlands permit, variance, interpretation, appeal to the Zoning Board of Appeals, or any modification or amendment of any of the foregoing.

#### **Section V. Exceptions:**

A. The following land use or developments are hereby excepted from the application of this local law:

- a. Any development of land of one acre or less abutting an existing public highway.
- b. Any subdivision of land into no more than two lots abutting an existing public highway.

B. Notwithstanding anything to the contrary contained in this local law, an applicant shall not be required to reimburse the Town for any part of a legal or engineering fee incurred by the Town for services performed in connection with matters, including but not limited to those resulting from complaints by third parties, as to which the Town Board determines the applicant or developer had no responsibility or was beyond the reasonable control of the applicant or developer.

#### **Section VI. Deposit of Funds and Payments of Fees:**

A. Initial planning and zoning review escrow deposits shall be delivered to the Town Clerk as part of the original application submission. All applicants with matters pending before the Town Board, Planning Board, and/or Zoning Board of Appeals as of the effective date of this chapter shall be required to comply with the new escrow account maintenance provisions contained herein.

B. The amount of the initial deposit for the various land uses and 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 until amended or revised by subsequent resolution. 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 of legal and engineering services for the several Boards of the Town, nor its general administration expenses.

C. No review shall be undertaken by the consultants on any matter scheduled before the Town Board, Planning Board, and/or Zoning Board of Appeals until the initial fee and escrow deposit as set forth herein is paid.

D. Amounts deposited pursuant to this chapter shall be placed in a trust and agency liability account to fund expenses incurred by the Town in processing the application as provided for in Section IV, above. The Town shall keep a record of the name of the applicant and project and of all such monies deposited and withdrawn.

E. Each of the Town's engineering, legal, and/or other consultants who render services pertaining to a land use or development application shall submit monthly itemized vouchers to the Town Board (through the Clerk to the Planning Board) reasonably setting forth the services performed and amounts charged for such services. Copies of said itemized vouchers shall be transmitted to the applicant simultaneously with their delivery to the Town Board, together with a

notice notifying the applicant that the failure to object to payment of the amount of the charges contained in said itemized voucher out of escrow funds within 15 days of the sending of said notice shall constitute an agreement by the applicant as to the reasonableness of the charges.

F. The Planning Board and/or Zoning Board of Appeals shall review vouchers for services rendered to each and shall communicate its approval of same to the Town Board. The Town Board shall review and audit all such vouchers and shall determine, in its discretion, the engineering, legal, and/or other consultant fees which are reasonable in amount and necessarily incurred by the Town in connection with the review and/or approval of the land use or development application. A fee or expense or part thereof is reasonable in amount if it bears a reasonable relationship to the customary fee charged by engineers, attorneys and/or other consultants within the region for services performed on behalf of applicants or reviewing boards in connection with applications for land use or development. The Town Board may take into account any special conditions for considerations as the Town Board may deem relevant. A fee and expense or part thereof is necessarily incurred if it was charged by the engineer, attorney, and/or other consultant for a service which was rendered in order to assist in the protection or promotion of the health, safety, or welfare of the Town or its residents; to assist in the protection of public or private property or the environment from potential damage that otherwise may be caused by the proposed private land use or development; to assure or assist in compliance with laws, regulations, standards or codes which govern land use and development; to assure or assist in the orderly development and sound planning of a land use or development; to assure the proper and timely construction of public improvements, parks, and other facilities which affect the public welfare; to protect the legal interests of the Town; to avoid claims against and liability of the Town; or to promote such other interests that the Town Board may specify as relevant.

G. After review and audit and approval of such voucher by the Town Board, that Board shall authorize payment of such vouchers out of the monies deposited by the applicant, and shall provide to the applicant a copy of the voucher as audited.

H. If at any time during or after the review of an application the escrow account falls below 80% of the initial deposit, the applicant shall, unless the requirement is waived by the Chairman of the Planning Board and/or Zoning Board of Appeals (as appropriate), pay additional funds into the escrow account to maintain that account at 80% of the initial deposit. In the event that the applicant fails to deposit such funds, any review, approval, building permit, or certificate of occupancy may be withheld until such monies are deposited. The applicant shall remain responsible to reimburse the Town for its costs and expenses in reviewing the applicant's land use or development application notwithstanding the escrow account may be insufficient to cover such approved vouchers.

I. The Town Board, Planning Board, and/or Zoning Board of Appeals are hereby authorized, at the time of action on any project, to make payment of any amount then overdue or likely to be later incurred a condition of approval. No plat or plans will be signed and no building permit or other permit shall be issued until such time as all reimbursement of costs and expenses, determined by the Town Board to be due, have been fully paid.

J. In the event that an applicant shall withdraw his application at any stage of the proceedings or when the application review and approval process has been completed, the balance of funds in the applicant's account shall be either remitted to the applicant when reimbursement has been completed and within 60 days of final action by the Planning Board, or, if so directed by the applicant, shall remain on deposit as the applicant's initial payment toward post-approval inspection requirements.

K. After final approval, acceptance, and/or the issuance of a certificate of occupancy relating to any specific land use or development, and after payment of all approved vouchers submitted regarding such land use or development, any sums remaining on account to the credit of such applicant shall be returned to such applicant, along with a statement of the vouchers so paid.

**Section VII. Appeals:**

An applicant may appeal, in writing, to the Town Board for a reduction in the required reimbursement amount. An appeal must be filed with the Town Board no later than 15 days after mailing or other delivery to the applicant of the contested voucher. Upon such appeal, the Town Board, in its discretion, may determine that an applicant is not required to reimburse the Town for that part of an engineering, legal, and/or other consultant fee incurred by the Town for services performed in connection with an application matter for which the Town Board determines the applicant bears no responsibility and which was beyond the reasonable control of the applicant. The Town Board's determination shall be in writing and shall be made no later than 45 days after receipt of the applicant's appeal.

**Section VIII. Savings Clause:**

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

**Section IX. Effective Date:**

This local law shall take effect immediately upon filing with the Secretary of State.