

## NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** by the Town Board of the Town of Ramapo, that pursuant to the provisions of the Town Law of the State of New York, a public hearing will be held at 7:00 o'clock P.M. (Prevailing Time), on the 11<sup>th</sup> day of May, 2022 at the Ramapo Town Hall, 237 Route 59, Suffern, New York 10901, and VIA ZOOM (link available on the Town website at [www.ramapo.org](http://www.ramapo.org)) to consider the adoption of a local law entitled **“TOWN OF RAMAPO, INTRODUCTORY LOCAL LAW, REIMBURSEMENT OF CONSULTANT FEES”**, which local law shall provide as follows:

### **TOWN OF RAMAPO INTRODUCTORY LOCAL LAW REIMBURSEMENT OF CONSULTANT FEES**

BE IT ENACTED by the Town Board of the Town of Ramapo, County of Rockland, State of New York, as follows:

Section 1. Chapter 122, titled “Consultant Fees,” of the Code of the Town of Ramapo is repealed and replaced with a new Chapter 122, titled “Reimbursement of Consultant Fees,” to read as follows:

§122-1. Legislative intent.

- A. Intent. The Town incurs significant expense in connection with the review of zoning, land use, and other applications made to the Town Board, Planning Board, Zoning Board of Appeals, Architectural Review Board, CDRC, Building Department, Town Engineer, Town Clerk and other agencies and departments of the Town (“reviewing body”) required to review those applications. In many cases, the Town has found that the circumstances of specific properties and/or the proposed use of a property require the participation of consultants with relevant experience and expertise to properly advise the reviewing body on health, safety, welfare and environmental issues raised by the application, and do not make it feasible to equitably determine the average cost of reviewing all land use applications. Since the applicants seek to obtain reviews and approvals to use land regulated by the zoning, subdivision and other regulatory provisions of the Town Code, the State Environmental Quality Review Act and implementing regulations, and other applicable laws and regulations, so as to secure

substantial benefits for the applicant and/or property owner, it is appropriate that the applicant and property owner bear the application-specific burden of securing those benefits that are not general costs to the Town. The intent of this Chapter is to ensure in appropriate cases that the benefited parties reimburse the Town of Ramapo for all reasonable and necessary fees, costs and expenses (collectively, “fees”) incurred by the Town in connection with the review of applications that require the Town to retain the services of consultants to review the adequacy and substance of such applications.

- B. Authority. This Chapter is enacted pursuant to the authority conferred by §10 of the Municipal Home Rule Law, including but not limited to §10(1)(ii)(a)(9-a).

#### §122-2. Establishment of comprehensive fee schedule.

- A. The Town Board shall establish by Resolution a schedule of fees to be paid to the Town of Ramapo upon the filing of certain applications or other requests (“application”) for a reviewing body to issue an approval, permit, certificate or other determination or to otherwise authorize, in whole or part, a proposed project or activity (“approval”).
- B. The schedule of fees may thereafter be amended, from time to time, by Resolution of the Town Board. All such fees in effect at the time of adoption of any local law amending this Chapter shall remain in effect until such time as those application fees are amended by Resolution of the Town Board. Any Resolution amending the schedule of fees shall be filed with the Town Clerk. The failure to file such Resolution with the Town Clerk shall not affect the obligation to pay such fee.
- C. Any fee established elsewhere in this Code which is not inconsistent with a fee established pursuant to this Chapter shall remain effective.

#### §122-3. Application review fees; procedure for reimbursement.

- A. The application fees established pursuant to Section 122-3 shall be deemed to be the minimum fee to be charged.
- B. The applicant shall also be responsible for reimbursing the Town for the additional fees that are reasonably and necessarily incurred by reviewing bodies of the Town for the services of professional consultants, including but not limited to planners, civil and traffic engineers, environmental consultants, architects, forensic experts, accountants and attorneys, whether employed by the Town or retained as an independent contractor (“consultants”) that are reasonably and necessarily required by the reviewing body to exercise its duties and responsibilities with respect to the application. The applicant is only responsible for reimbursing the Town for the reasonable and necessary fees it incurs in review of a specific application. Reimbursement shall not be used to offset the Town's general costs for engineering, legal, planning or other services provided to the reviewing bodies of the Town or to offset the Town's general expenses.
- C. The Chair of the reviewing body or other designated person(s) are authorized to require

an applicant to establish an escrow account in accordance with this Chapter so that sufficient funds will be available to the Town from time to time to reimburse the reasonable and necessary costs of application review services that are required by the reviewing body.

- D. Reimbursement payments required pursuant to by this Chapter shall be for services required by a particular application, and shall not affect any other application, inspection or other fees required by any other laws, resolutions, provisions, regulations or codes of the Town that may apply to the application.

§122-4. Application fee; establishment of escrow account required for complete application.

- A. Payment of the application fee required by Section 122-2 shall be necessary, but not sufficient, for the submitted application to be considered a complete application for purposes of commencing review.
- B. When required by the reviewing body, establishment of an escrow account as required by Section 122-3 shall be necessary, but not sufficient, for the proposed or submitted application to be considered a complete application for purposes of commencing review.

§122-5. Escrow deposit required; replenishment of escrow account.

- A. Prior to incurring any fees for the services of consultants in connection with review of an application for an approval, the reviewing body with jurisdiction over such application shall require the applicant to deposit funds into an escrow account maintained by the Town in sufficient amount to reimburse the Town for the anticipated fees to be incurred for such services.
- B. No later than the time of the first meeting or appearance on the application, the reviewing body shall fix the amount of the initial escrow deposit to be made by the applicant. Prior to the first meeting or appearance of any application on any agenda, the Building Department may set an initial escrow amount which shall be thereafter reviewed and may be revised by the reviewing body.
- C. When appropriate to do so in order to facilitate the initial review of an application prior to any appearance of an applicant before the reviewing body, the chair or other designated person(s) of the reviewing body may require that the applicant make the initial escrow deposit before such appearance or any review undertaken by the reviewing body.
- D. The Town's consultants shall provide invoices to the Town within 60 days for services rendered in review of each application and performance of their responsibilities with respect to such application.
- E. If at any time during the review process the amount of the escrow account falls below 50% of the initial escrow amount, as determined by the Chair or designated person(s) of the reviewing body, then the applicant shall be required to submit an additional deposit to

bring the total escrow up to the full amount of the initial deposit or such different amount as determined by the reviewing body or designated person(s).

- F. Subsequent to the establishment of an escrow account for an application, the Building Department or other designated person(s) shall, prior to placing that application on the agenda for review or action that will cause the Town to incur consultant fees, determine whether sufficient funds are available in the escrow account to reimburse the Town for the anticipated consultant fees. When sufficient funds are not available, but the Building Department determines it is necessary to place the applicant on the agenda for action, the Building Department shall advise the applicant that it will be placed on the agenda solely for the purpose of taking such necessary action, but that the reviewing body shall not incur additional review fees until sufficient funds to reimburse those fees are available in the escrow account. The reviewing body may elect to suspend review of the application, in whole or part, or to waive the requirement to replenish the escrow account for good cause shown.
- G. Following final action by the reviewing board or written withdrawal of the application, the applicant may make written request for the return of any unencumbered funds in the escrow account. Within 60 days after the date the final action is filed or the meeting at which the written withdrawal is received by the reviewing body, the Town will return any amount held in escrow that is not required to reimburse the Town for outstanding fees. In the event that the action of the reviewing body is subject to conditions, the unencumbered escrow funds will be released 60 days after the conditions are met and final action is taken by the reviewing body.
- H. In the event the amount of escrow is less than the full amount that the Town is charged by the Town's consultants, the applicant shall reimburse the Town for those fees in excess of the escrow amount.

§122-6. Presentation of vouchers.

- A. Town consultants who provide services to a reviewing body pertaining to a land use or development application shall present their itemized vouchers to the Town, setting forth, in sufficient detail, the services performed and the amounts charged for such services, within 60 days of providing those services.
- B. The Chair or other designated person(s) of the reviewing body shall cause the voucher to be reviewed to determine that the services were appropriate and the charges were reasonable and necessary to assist the reviewing body in performing its responsibilities.
- C. Following review by the Chair or the designated person(s), the Building Department shall promptly forward the itemized voucher to the Town Board for review and audit.
- D. To ensure that that the applicant has an opportunity to bring any objections to the attention of the Town Board prior to audit of the voucher, a copy of the voucher shall be transmitted to the applicant within 24 hours of delivery to the Town Board. The

applicant will have 15 days from the date of delivery to the applicant to object to the payment of charges set forth in the itemized voucher out of escrow funds. The failure of the applicant to notify the Town Board that it objects to the payment of any such charge within 15 days of delivery of the voucher shall constitute the applicant's consent to withdrawal of the charges from the escrow account.

- E. Vouchers to be charged against the escrow deposit shall be deemed delivered when emailed by the Town to the applicant's designated representative of record. All applicants that are required establish an escrow account with the Town must provide an email address for a designated representative who will accept service of said vouchers. If any application does not have an email address for said designated representative, the application will be placed on hold until appropriate contact information is provided by the applicant.

#### §122-7. Review and audit of vouchers.

- A. The Town Board shall review and audit all such vouchers, and any objections thereto, and shall determine, in its sole discretion, whether the fees incurred by the reviewing body are reasonable in amount and necessarily incurred by the Town in connection with the review of and action on the application by the reviewing body. The Town Board may require submission of any additional documentation the Board deems necessary to make this determination.
- B. The Town Board will consider that a fee or part thereof is reasonable in amount if it bears a reasonable relationship to the customary fee charged by consultants within the region for similar services performed on behalf of applicants or municipal boards in connection with similar applications for land use or development approval. The Town Board may also take into account any special circumstances that it deems relevant to the application review.
- C. The Town Board will consider that a fee or part thereof is necessarily incurred if it was charged by the reviewing body's 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 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 review process and to avoid claims against or liability related to the review and action undertaken by the reviewing body; or to promote such other interests that the Town Board may specify as relevant.

#### §122-8. Disputed charges.

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 Clerk no later than 15 days after delivery to the applicant of the contested invoice. Upon good cause being shown on such appeal, the Town Board, in its sole discretion, may determine that it will relieve the applicant of the obligation to reimburse the Town for that part of any consultant fee incurred by the Town for services performed in connection with an application which the Town Board determines were not reasonable and necessary. The Town Board's determination shall be in writing and shall be made within 45 days of the date that the Town Board receives all information it requires to decide the applicant's appeal.

§122-9. Remedy for failure to reimburse costs.

The applicant and the owner(s) of the subject real property, if different from the applicant, shall be jointly and severally responsible to reimburse the Town for funds expended to pay for consultant services rendered to the Town. In order for an application to be deemed complete, the applicant shall provide the written consent of all owners of the subject real property acknowledging concurrent property owner responsibility to reimburse the Town for reasonable and necessary consultant fees incurred by the Town. In the event that insufficient funds have been deposited in escrow and the applicant and property owner fail to reimburse the Town for such fees, the following shall apply:

- A. The Town may seek recovery of unreimbursed costs for application review by Town consultants by action in a court of appropriate jurisdiction, and the defendant(s) shall be responsible for and shall pay the reasonable and necessary attorneys' fees expended by the Town in prosecuting such action.
- B. Alternatively, and at the sole discretion of the Town Board, the failure of an applicant or property owner to fully reimburse the Town for consultant fees incurred and expended by the Town may be remedied by assessing and levying the unpaid amount on the property owner's property tax bill. Upon approval by the Town Board, such unpaid amount shall be assessed and levied against and constitute a lien on the real property upon which it is levied until paid, and shall be collected in the same manner and at the same time as other Town real property taxes.
- C. In the event the affected premises comprise more than one tax lot, then the Town Comptroller is authorized to distribute such levy in proportion to the assessed value of each lot of the aggregate value of all lots comprising the premises.
- D. Such charges shall be assessed, levied and collected at the same time and in the same manner as Town real property taxes and shall be applied by reimbursing the fund from which the Town made payment of the consultant fees.
- E. Prior to Town Board approval to levy such charges or assessments on the tax bill, the owner of the real property shall be provided written notice to its last known address as shown on the most recent Town assessment roll, by certified mail, return receipt requested, of an opportunity to be heard and object before the Town Board to the proposed real property charge or assessment, at a date to be designated in the notice,

which shall be no less than 20 days after its mailing.

- F. In the event any applicant or property owner is not in agreement with any determination by the Town Board regarding fee issues, then the applicant or property owner shall have the right to file an Article 78 proceeding in the Supreme Court for the County of Rockland within thirty (30) days of said Town Board determination to challenge that Town Board determination.

§122-10. Pre-application reviews; reimbursement of costs.

- A. Intent. From time to time, property owners or their representatives contemplate undertaking complex land development activities that involve review and analysis of zoning, planning and environmental issues prior to making a formal land use application. The Town Board recognizes that it may be necessary for a property owner or their representative contemplating such development to consult with representatives of the Town and Town consultants with special experience and expertise to assist in the development of an appropriate proposal that will address Town objectives, ongoing municipal planning initiatives, and allow the efficient allocation of Town resources for such purpose, particularly with respect to zoning and environmental analysis of the proposal. The Town Board believes it would therefore be in the public interest to afford property owners and their representatives the opportunity to involve Town representatives and Town consultants in the development of land use proposals for specific properties that involve unique circumstances or unanticipated uses of a property, where the proposal would benefit from the participation of consultants with relevant experience and expertise before a formal application is submitted.
- B. Such pre-application review shall be limited to proposals which are likely to be designated as a Type I SEQRA action and/or which would provide a significant opportunity for the development of significant rateable property in the Town, generate a significant increase in employment in the Town or otherwise provide an opportunity to create significant economic development in the Town. The Town Board may, by Resolution, establish the specific criteria for proposals to qualify for the pre-application review procedure to accomplish the Town's objectives, which may be amended by Resolution from time to time.
- C. Since it is appropriate for the property owner or their representative seeking such approvals to bear the burden of securing those benefits by reimbursing the Town of Ramapo for all reasonable and necessary fees incurred by the Town in connection with the review of pre-application proposals that require the Town to retain the services of consultants to review the adequacy and substance of such proposals, the procedures and requirements of this Chapter shall apply to pre-application reviews.

Section 2. Supercession of Inconsistent Laws, if any. The Town Board hereby declares it legislative intent to supersede any provision of the state Town Law or any special law that may be declared inconsistent or in conflict with this local law. The state law provisions that shall be and hereby are, superseded include, but are not limited to, all of Article 16 of the Town

Law, §§261 to 285 inclusive, and any other provision of law that the Town may supersede pursuant to the state Municipal Home Rule Law and the Constitution of the State of New York. The courts are specifically requested to take notice of this legislative intent and apply such intent in the event the Town has failed to specify any provision of law that may require supercession.

Section 3. Severability. If any section, part or provision of this local law or the application thereof to any person, property or circumstance is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, provision or application directly and expressly adjudged invalid and shall not affect or impair the validity of the remainder of this local law or the application thereof.

Section 4. Effective date. This local law shall take effect immediately upon filing with the Secretary of State.

**NOTICE IS HEREBY FURTHER GIVEN** that all interested persons will be given an opportunity to be heard.

Dated: Suffern, New York  
April 28, 2022

BY ORDER OF THE TOWN BOARD  
OF THE TOWN OF RAMAPO

SHARON OSHEROVITZ  
Town Clerk