

PROPOSED LOCAL LAW CC– 2017

A Proposed Local Law to amend Chapter 176 of the Code of the Village of Mamaroneck (Fees) regarding reimbursement for consultant fees for land use applications

BE IT ENACTED by the Board of Trustees of the Village of Mamaroneck as follows:

*(Language in strike-through ~~abedefhijk~~ to be deleted; language in **bold** is to be added)*

Section 1.

Article I of Chapter 176 of the Code of the Village of Mamaroneck is amended as follows:

§ 176-1. Purpose.

The purpose of this article is to ~~allow for~~ **ensure** reimbursement to the Village for the actual costs of professional consulting and Village professional staff services with respect to the review of **land use** applications ~~before its various boards and commissions for approval to utilize any property in the Village~~ **the Board of Trustees or any other board or commission having jurisdiction to approve or recommend with respect to the application.** The Village has found that, in many instances where it would otherwise be appropriate, ~~it fails to avail itself of expert consulting services,~~ **the reviewing board is reluctant to do so** because of the cost to the taxpayers, **but the Village nevertheless bears the cost because the necessary professional services are provided by the Village staff.** ~~It is felt that it is more appropriate for the individual~~ **The purpose of this law is to require that** applicants ~~to bear the cost of~~ **the professional services the Village needs to review their land use applications in a fair and equitable manner, consistent with the law of the State of New York** ~~review of their land use applications in a manner which will assist the various boards and commissions of the Village in appropriately evaluating the potential impacts of those applications and how the applications fit within the Village's comprehensive plan and ordinances.~~

§ 176-2 Definitions

For purposes of this chapter, the following terms shall have the meanings ascribed to them in this section:

APPLICANT – The person or entity sponsoring or making an application for approval to use land, but not a board, commission or other entity of the Village of Mamaroneck or an individual or entity challenging an application by another for approval to use land.

CONSULTANT – A person or entity providing professional services, other than an employee of the Village of Mamaroneck.

LAND USE APPLICATION – Any application by an applicant for subdivision approval, site plan approval, a special permit, a zoning amendment, an amendment to the comprehensive plan, an amendment to the zoning map, a wetland permit, a variance, a perimeter, construction or reconstruction permit or a consistency determination, an appeal by an applicant to the Zoning Board of Appeals from a determination of the Building Inspector or

a request by an applicant to the Zoning Board of Appeals for an interpretation of the zoning code by an applicant for a building permit or other approval.

PROFESSIONAL SERVICES – The planning, environmental, engineering, legal, architectural, accounting or other professional services reasonably necessary to review a land use application, whether provided by a consultant or Village staff.

REVIEWING BOARD – The Board of Trustees or any other board or commission of the Village of Mamaroneck having jurisdiction to approve or recommend with respect to any land use application.

~~§ 176-23 Escrow deposit required~~ **Payment for the cost of professional services.**

~~A. Notwithstanding any inconsistent provision of any local code, rule, regulation, law or ordinance, any Village board, entity or commission (reviewing board) where a permit or approval is required by local law, rule, regulation or ordinance shall, before processing or reviewing any application and permitting use of or construction on, under or adjacent to real property, require the applicant to deposit funds with the Village sufficient to reimburse the Village for all reasonable costs of planning, environmental, engineering, legal, architectural, accounting and/or other consultants deemed appropriate by each reviewing board utilized in connection with the review of any application. When an application is filed, the Building Inspector shall fix the amount of the initial deposit (escrow) to be made by the applicant. The Village's consultants shall invoice the Village no less frequently than monthly for services in reviewing each application and performing their duties with respect to such application. If at any time during the review process the amount of the escrow account falls below 50% of the initial escrow (as determined by the Clerk Clerk Treasurer), 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 (as determined by the Building Inspector) unless the Clerk Clerk Treasurer otherwise waives such requirement. Any failure to replenish the escrow shall be governed by § 176-4.~~

~~B. In the event the amount held in escrow by the Village is more than the amount of the actual billing or invoicing, the difference between such amount and the actual billing or invoicing shall be promptly refunded to the applicant after final action is taken on the application.~~

~~C. In the event the amount of escrow is less than the full amount actually charged by the Village's consultants, the applicant shall promptly pay any remaining balance. If the remaining balance is not paid, the unpaid balance shall be added to the Village tax bill.~~

A. Notwithstanding any inconsistent provision of any local code, rule, regulation or ordinance, except the provisions of Article XVII of Chapter 342 of the Village Code, every reviewing board shall require the applicant for any land use application to pay the cost of the professional services necessary to review the application.

B. Before a land use application is determined to be complete, the Building Inspector, in consultation with the Village Manager and the Village Planner, must

- (1) advise the applicant that the applicant will be required to pay the cost of the professional services necessary to review the application;**
- (2) identify the need for any professional services needed by any reviewing board to review the application;**
- (3) specify the scope of the necessary professional services;**
- (4) determine whether those professional services will be provided by a consultant or by Village staff;**
- (5) determine the amount reasonably necessary for the applicant to deposit with the Village Clerk-Treasurer to ensure that the Village has sufficient funds to pay the cost of the necessary professional services on a timely and continuing basis;**
- (6) require the applicant to deposit the escrow amount with the Village Clerk-Treasurer; and**
- (7) provide the applicant with a written statement of these determinations and requirements which will become part of the application.**

- C. Before any reviewing board may undertake any further review with respect to the application, the applicant must deposit with the Village Clerk-Treasurer the amount the Building Inspector has determined to ensure that the Village has sufficient funds to pay the cost of the necessary professional services on a timely and continuing basis. The Village Clerk-Treasurer will hold the escrow deposit in an interest-bearing trust and agency account. If the Village Clerk-Treasurer determines at any time during the review process that the amount in the escrow account has fallen below 50 percent of the escrow amount required by the Building Inspector, the Village Clerk-Treasurer will notify the applicant that an additional deposit with the Village Clerk-Treasurer sufficient to bring the balance in the escrow account to the amount required by the Building Inspector. If the applicant receives such a notice at least seven days before a meeting of a reviewing board and fails to make the additional deposit before that meeting, the Village Clerk-Treasurer will so notify the reviewing board and the reviewing board will not consider the application further until the applicant has deposited the additional funds, unless further consideration by the reviewing board is necessary to avoid an approval by reason of the passage of time.**
- D. At the initial meeting of each reviewing board with respect to the application, the reviewing board will review the determinations made by the Building Inspector with respect to the deposit for the payment for professional services, confirm or modify the Building Inspector's determination as to the professional services needed for review of the application and, where consultants' services are needed, request that the Village Manager retain a consultant or consultants to provide the necessary professional services. If after further consideration of the application a reviewing board determines that additional or different consultants' services are necessary to review the application, the reviewing board will so notify the Building Inspector and the Village Manager who will take appropriate action consistent with this Article.**

- E. The Village Manager will maintain a list of qualified consultants and will review and revise that list on a regular basis. Within 30 days after a request from a reviewing board for professional services, the Village Manager will select a consultant or consultants and engage the consultant or consultants in accordance with the Village's procurement policy.**

§ 176-34 Review and payment Payment of invoicesreview costs.

~~All invoices for fees charged to applicants by consultants shall be reviewed and approved by the Village Manager as to reasonableness before payment by the Village and applicant shall be provided with copies of the invoices charged against the Escrow deposit. In the event an applicant believes that the charges invoiced are excessive, the applicant may file a written protest to the Village Manager, within 15 days of receipt of the invoice, questioning such invoice and the Manager shall review the protest by the applicant and provide the applicant with a written response within 15 days of receipt of the protest.~~

- A. Consultants and Village staff members providing professional services will submit monthly statements to the Village Manager for their professional services setting forth the services provided and the cost of those services. The cost of professional services provided by a consultant will be as provided in the consultant's agreement with the Village, consistent with the usual charges for such services in Westchester County. The cost of professional services provided by the Village's professional staff will be at hourly rates based upon the actual salary and benefits paid by the Village, as determined by the Village Manager.**
- B. Within 15 days of the receipt of a monthly statement from a consultant or the Village's professional staff, the Village Manager will provide a copy of the statement to the applicant by regular mail to the address specified by the applicant or by electronic mail if the applicant specifies an electronic mail address. The applicant may dispute any charge by notifying the Village Manager of the basis for the dispute in writing within 15 days of the date on which the Village Manager gives the applicant notice of the statement.**
- C. If the applicant does not dispute any charge, the Village Manager will direct the Village Clerk-Treasurer to pay the charges. If the applicant disputes any charge, the Village Manager will determine within 15 days, based upon the applicant's statement, whether to pay the disputed charge, and will direct the Village Clerk-Treasurer to pay the charges the Village Manager determines to be reasonable and consistent with the provisions of this Chapter.**

§ 176-45 Failure to pay feesreview costs.

~~In the event an applicant fails to make any escrow payment required and/or fails to pay the full amount billed for consultant fees (as approved by the Village Manager), the reviewing board shall adjourn any pending application and/or withhold final approval until such payment is made. In the event final approval has been granted and an outstanding balance for consulting fees (as approved by the Village Manager) remains unpaid, the Building Inspector shall not grant a building permit~~

~~and/or certificate of occupancy until payment of approved outstanding consulting fees has been made in full.~~

- A. The Building Inspector shall not grant a building permit, certificate of occupancy or certificate of completeness until all fees required by this Chapter have been paid in full.**
- B. If, after final action is taken on the land use application and the Village Manager has received and approved all statements for professional services with respect to the application, the escrow amount held by the Village Clerk-Treasurer is less than the charges for professional services approved by the Village Manager, the applicant must pay the remaining balance within 30 days. If the applicant fails to do so, the Village Manager will cause the unpaid amount to be added to the next Village tax bill for the property that is the subject of the application.**
- C. If, after final action is taken on the land use application and the Village Manager has received and approved all statements for professional services with respect to the application, the escrow amount held by the Village Clerk-Treasurer is greater than the charges for professional services approved by the Village Manager, the Village Clerk-Treasurer will refund the balance to the applicant within 30 days.**
- D. Withdrawal of a land use application before action is taken does not relieve the applicant of the applicant's obligation to pay the cost of professional services incurred in connection with the review of the application prior to its withdrawal.**

~~§ 176-56 Supersession of other laws.~~

- ~~A. All laws, ordinances, rules and regulations of the Village of Mamaroneck are modified and superseded by this article with respect to their application to fees which may be charged with respect to applications for land use permitting or approvals, except for § 342-124 of the Zoning Code dealing with retention of experts for wireless telecommunications applications.~~
- ~~B. This article shall modify and supersede, with respect to the properties covered thereby, the provisions of Article 7 of the Village Law of the State of New York, Executive Law Article 42, and Navigation Law Article 4 of the State of New York.~~

Section 2.

If any section, subsection, clause, phrase or other portion of this local law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, the portion of the law declared to be invalid will be deemed a separate, distinct and independent portion and the declaration will not affect the validity of the remaining portions hereof, which will continue in full force and effect.

Section 3.

This law is adopted pursuant to the authority granted by Municipal Home Rule Law § 10(1)(e)(3) and will supersede the provisions of the Village Law and Article 42 of the Executive Law to the extent that they are inconsistent with this local law.

Section 4.

This local law will take effect immediately upon its filing in the office of the Secretary of State in accordance with Municipal Home Rule Law § 27.