

**Local Law \_\_ of 2022**  
**Authorizing the Town to Charge Consulting Fees and Require Escrows**

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

**1. Title.**

This chapter shall be entitled "A Local Law to Authorize the Town to Charge Consulting Fees and Require Escrows."

**2. Findings**

The Town Board hereby finds the following relating to the Town's land use approval boards, officials and procedures:

- a. Regulating proposed uses and development of land and construction of improvements is among the most important functions of Town government
- b. Expert evaluation of technical issues is essential to accurate, legal and fair land use determinations in the public interest.
- c. State law and fairness to applicants requires that consultant fees charged to applicants be reasonable and that the charged services be necessary to evaluate the merits and legality of the application.

**3. Statutory authority**

This local law is enacted under the authority of Article IX of the state Constitution, sections 10 and 22 of the Municipal Home Rule Law and section 138 and Article 16 of the Town Law.

4. Chapter 19, entitled "Escrows and Consultant Fees" shall be added to the Town Code of the Town of Hurley to read as follows:

**Escrows and Consultant Fees**

**§19-1 Intent**

- A. The Town Board of the Town of Hurley intends this local law to clarify and provide for the authority of the Town's land use approval boards and officials to charge applicants for the costs of professional services reasonably necessary to evaluate and render decisions on applications for such approvals.

- B. The Town also intends to establish a procedure to require applicants to deposit funds in a separate account to secure funding for such professional services, and requiring that payments from that account be made only upon receipt and approval of itemized vouchers from its consultants.

## **§19-2 Definitions**

As used in this chapter the following terms shall have the meanings indicated:

### **AGENCY**

A Board or official of the Town with jurisdiction and authority under the Town Code to review and approve, modify (including the imposition of conditions) or deny a land use proposal, including without limitation the Town Board, the Planning Board, the Zoning Board of Approvals and the Code Enforcement Officer

### **APPLICANT**

Any person, firm, partnership, association, corporation or entity of any type, kind or nature, who requests a Determination from an Agency. In the case of a referral from an Agency for an interpretation from a separate Town agency or officer, the Applicant before the Agency shall be considered the Applicant on the referral for the interpretation.

### **APPLICATION**

A request, application, for a Determination from an Agency.

### **CONSULTANT**

Any person or entity of any type which is retained by an Agency to provide consulting or other professional services for any Determination. For the purpose of this chapter, consulting services shall include, but are not be limited to, those services provided by engineers, lawyers, architects, landscape designers, certified surveyors, property appraisers, planners and related professionals.

### **DETERMINATION**

A decision by an Agency on a land use proposal requested by property owners and their designees pursuant to the Agency's jurisdiction and authority under the Town Code, including without limitation zoning amendments, site plans, subdivisions, special permits, use and area variances, zoning appeals, building permits, certificates of

occupancy, stormwater pollution prevention plans, short term rentals, and Code compliance determinations associated with such decisions.

### **§19-3 Consultant fees and escrow deposits.**

- A. Upon a resolution by an Agency from which an Applicant has requested a Determination, the Applicant shall defray the reasonable costs incurred by the Agency for Consultant services necessary for the Agency's Determination. For all purposes under this Chapter, such expenses shall include reasonable fees for such services that are necessary for any review or evaluation pursuant to the State Environmental Quality Review Act and its implementing regulations.
- B. The expenses for Consultants provided for herein are in addition to application or administrative fees required pursuant to other provisions of the Town Code.
- C. An Agency considering a Determination may require an Applicant to deposit into an escrow account a sum of money reflecting the estimated cost to the Town of the Consultant expenses reasonably necessary to allow the Agency to undertake the Determination, for the purpose of securing such Consultant expenses for the Determination. The Agency may consider the professional review expenses incurred by other municipalities and/or available surveys of such expenses in reviewing similar Applications in estimating the Consultant costs that the Applicant is required to deposit in escrow. The escrow payment and the Town's retention thereof pursuant to this Chapter shall be documented and governed by an Escrow Agreement in substantially similar form to Appendix A attached hereto, as may be amended from time to time by resolution of the Town Board.
- D. The Agency may require escrow deposits of the full estimated Consultant costs of the Determination, or alternatively may require at any time during its review escrow deposits less than the full estimated Consultant costs of the Determination, and retain authority to require further escrow deposits for the reasonable and necessary Consultant costs of the Determination if at any time there are or will be insufficient escrow funds for such Consultant costs. The Agency may require initial escrow deposits to defray the reasonable and necessary expenses for an initial Consultant review of the Application for the purpose of advising the reviewing Agency as to the issues involved in the Determination and the extent of Consultant fees reasonably necessary for the Determination.

- E. The Town Board may by resolution require initial escrow deposits for various categories of Determinations. Such initial escrow deposits shall provide the reasonable and necessary expenses for an initial Consultant review of the Application for the purpose of advising the reviewing Agency as to the issues involved in the Determination and the extent of Consultant fees reasonably necessary for the Determination.
- F. No Agency may assess Consultant costs to an Applicant in excess of an amount reflecting the reasonable fees for professional services necessary to the Agency's review of the Application and its Determination. No Agency may assess Consultant costs to an Applicant to offset the Agency's or the Town's general expenses of professional services, their general administrative expenses, or the Town's general fund.
- G. An Applicant may object to the amount of Consultant fees assessed by the Agency at any time during the pendency of its Application pursuant to the procedures in this Chapter. The Agency shall resolve any such objection prior to further proceedings on the Application.

## **§19-4 Disbursement of Escrow funds**

- A. Consultants shall submit itemized vouchers for disbursement of fees for their services on a monthly basis.
- B. Upon an Agency's receipt itemized vouchers of from a Consultant for services regarding a particular Application, the Agency or its Chairperson shall review the voucher to ensure that the charges are reasonable in amount and necessarily incurred by the Agency for its review of the Application and consideration of the Determination. In assessing the charged Consultant services, the Agency may take into consideration the size and type of the proposed land use and the potential environmental issues raised by the Application, the infrastructure proposed in the Application, and other special conditions the Agency may deem relevant.
- C. A charge or part thereof is necessarily incurred if it was necessary to assess the compliance of the Application with any applicable law and criteria for the Determination, including a review of the prospective impacts of the proposed land use pursuant to the State Environmental Quality Review Act.

- D. All vouchers submitted for payment shall be reviewed and approved by the agency reviewing the Application. The Agency (through its Chair if applicable) shall affix its signature upon the voucher prior to submission to the Town Board for payment.
- E. The Applicant may request copies of such vouchers and may contest any charge to the Agency or to the Town Board. If such contest is made before the Agency, the Agency shall review and determine the appropriate charge prior to further consideration of the Application. If such contest is made to the Town Board, the Town Board shall consult with the Agency as to the necessary Consultant services and the reasonable costs thereof for the Application, and the Agency shall suspend further consideration of the Application if it appears that remaining escrow deposits on the Application are not sufficient to cover the Consultant costs of continued review.
- F. Upon final approval of the charges in any voucher from a Consultant, the Town Supervisor shall cause such vouchers to be paid out of the monies deposited in escrow, and shall debit the separate record of such account accordingly.
- G. The Agency shall remit to the Applicant a summary of the escrow charges and balance on a monthly basis.
- H. Applicants are permitted to deposit funds into their escrow accounts at any time to ensure the sufficiency of their funding to continue the review of their Application.
- I. Upon completion of the review of an Application due to a Determination or the withdrawal of the Application, and after all Consultant fees incurred by the Agency have been paid and deducted from the escrow account, any balance remaining in the escrow account shall be refunded to the Applicant along with a final accounting of the escrow. Such refund and accounting shall occur as promptly as practicable but in no case more than 60 days after the Applicant's request.

### **§19-5 Failure to reimburse Town.**

In the event of an Applicant's failure to deposit funds into escrow or otherwise to reimburse Consultant expenses as assessed by an Agency, the following remedies may apply:

- A. Upon the requirement of an escrow deposit for an Application, an Agency shall neither place an Application on the agenda or review or continue to review such Application until such deposit is made by the Applicant.
- B. An Agency shall not render a Determination for which the Applicant has failed to make any required payment under this Chapter, and shall not render a Determination conditioned on future payments to be made. No Agency shall accept an Application or consider or grant any Determination for an Applicant that has outstanding any fees due the Town from any previous Application.
- C. In the event of a zoning amendment or other local law requested by an Applicant, the Town Supervisor shall inform the Town Clerk of any outstanding Consultant fees prior to the Town Clerk's submittal such local law to the New York State Secretary of State. Such local law shall not be filed with the Secretary of State until such outstanding fees have been reimbursed to the Town or the Town Supervisor has entered into a written agreement with the Applicant upon authorization by resolution of the Town Board extending the time of payment of such fees.
- D. In the event of an Application to the Planning Board, all outstanding Consultant fees billed to the Applicant shall be paid in full to the Town prior to the Planning Board Chairman affixing their signature to the site plan, subdivision plat or special permit as the case may be.
- E. In addition to the foregoing, the Town may seek recovery of unpaid Consultant fees billed by any Agency by bringing a civil action, and the Applicant shall pay the town's reasonable attorney fees in prosecuting such action in addition to any judgment.
- F. In addition to the foregoing, and at the sole discretion of the Town Board, an Applicant's failure to reimburse the Town for Consultant fees assessed by an Agency may be collected by charging such sums against the real property that is the subject of the Application, and by adding that charge to and making it a part of the next real property tax bill associated with the subject property. Such charges shall be levied and collected at the same time and in the same manner as general town taxes, and such fees shall be paid by the Receiver of Taxes to the Town to be applied to the escrow fund from which the costs for fees are paid. Prior to incorporating such delinquent fees into the real property tax bill, the Town

shall send written notice to the Applicant's address as contained in the Application and to the property owner, if other than the Applicant, at the owner's address of record as contained in the current assessment roll. Such written notice shall be sent by the Town by certified mail, return receipt requested. Such notice shall inform the owner and Applicant of the delinquent amount of fees owed to the Town, shall provide a date for a public hearing before the Town Board on the delinquent fees which hearing may be waived by the Applicant in writing, and shall be mailed or delivered no later than 10 calendar days before the date of the hearing. After the hearing, the Town Board shall be empowered to adjust the fees owed by the owner or Applicant consistent with this Chapter and to extend terms of payment and adequate security of the debt and enter into a written agreement with the owner or applicant to facilitate the payment in full of the fee.

## **5. Supersession**

To the extent that NYS Law does not authorize the Town to require reimbursement for Consultant expenses incurred by Agencies for their review of Applications as defined in this Chapter, it is the expressed intent of the Town Board to supersede such statutes. Additionally, to the extent that state law does not authorize the Town to withhold Approvals or to assess delinquencies in the event such expenses are not paid to the Town as provided in this Chapter, it is the expressed intent of the Town Board to change and supersede such state law to authorize the Town to undertake such enforcement.

## **6. Effective Date**

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