

PURSUANT TO CALL A REGULAR MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, WAS DULY HELD AT THE HENRIETTA TOWN HALL, 475 CALKINS ROAD, HENRIETTA, NEW YORK ON THE 17<sup>th</sup> DAY OF JUNE 2015 AT 7:00 P.M.

RESOLUTION #13-176/2015

On Motion of  
Councilman Breese

Seconded by  
Councilwoman Zinck

WHEREAS, a Resolution was duly adopted by the Town Board of the Town of Henrietta on the 3<sup>rd</sup> day of June, 2015, calling for a Public Hearing to be held by the Henrietta Town Board on the 17<sup>th</sup> day of June, 2015, at the Henrietta Town Hall, 475 Calkins Road, Henrietta, NY, at 7:00 PM, to hear all interested parties on a proposed Local Law to amend the Henrietta Town Code By Adding Provisions Relating to the Reimbursement of Consultant and Professional Fees, and

WHEREAS, notice of said Public Hearing was duly advertised in accordance with law, and

WHEREAS, said Public Hearing was duly held at the Henrietta Town Hall on the 17<sup>th</sup> day of June, 2015, at 7:00 PM, and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said proposed Local Law, or any parts thereof, and

WHEREAS, the Town Board of the Town of Henrietta, after due deliberation, finds it in the best interest of the Town to adopt said Local Law, specifically in that the Local Law will permit the Town of Henrietta to recoup its expenses directly from applications in relation to the Town's review of land use and related applications, and

WHEREAS, the Town Board of the Town of Henrietta finds that the Henrietta Town Code should be amended as set forth herein.

THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Henrietta that the Town Board hereby adopts said Local Law No. 4 of 2015, To Amend the Henrietta Town Code by Adding Provisions Relating to the Reimbursement of Consultant and Professional Fees, as set forth in the attached Local Law, which is incorporated herein.

BE IT FURTHER RESOLVED, that the Town Clerk of the Town of Henrietta be and hereby is directed to enter said Local Law into the Minutes of this Meeting and to give due notice of the adoption of said Local Law to the Secretary of State of the State of New York, and said Law shall take effect immediately upon filing with the Secretary of State.

Duly put to a vote:

Councilman Mulligan	voting	Aye
Councilwoman Zinck	voting	Aye
Councilman Page	voting	Aye
Councilman Breese	voting	Aye
Supervisor Moore	voting	Aye

Carried

**LOCAL LAW NO. 4 of 2015 TO AMEND THE HENRIETTA TOWN CODE BY ADDING PROVISIONS RELATING TO THE REIMBURSEMENT OF CONSULTANT AND PROFESSIONAL FEES**

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

**Section A. Authorization.**

This local law is enacted under the authority of New York State Municipal Home Rule Law, including without limitation, Subparagraphs (a)(12) and (d)(3) of the Municipal Home Rule Law § 10(1)(ii) and Municipal Home Rule Law § 22. To the extent Town Law §§ 265, 267-b, 274-a, 274-b, 276, 277 and 278 do not directly authorize the Town Board, Planning Board, or Zoning Board of Appeals to require the reimbursement to the Town of consultant, professional, legal and engineering expenses incurred by the Town in connection with the review and consideration of any of the applications for the permits or approvals described in those statutes, 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 these provisions of New York State Town Law and any other provision of New York State Town Law or General Municipal Law to empower the Town to require such payment as a condition to such approvals.

**Section B. Title and Purpose.**

This law shall be known as and may be cited as Local Law No. 4 of 2015, To Amend The Henrietta Town Code by Adding Provisions Relating to the Reimbursement of Consultant and Professional Fees.

**Section C. Legislative Finding.**

The Town Board of the Town of Henrietta, Monroe County, New York, is concerned about the orderly development of land in the Town of Henrietta. The Town Board hereby finds and determines that in order to protect and safeguard the Town of Henrietta, its residents and their property with respect to land development within the Town, all buildings, structures, streets, highways, drainage facilities, sanitary sewer facilities, water supply facilities, utilities, and parks within the Town should be designed and constructed in a competent and workmanlike manner and in conformity with all applicable governmental codes, rules, regulations and laws. In order to assure the foregoing, it is essential for the Town to have competent consultants, professionals, planners, engineers and attorneys, as appropriate, to review and analyze plans and designs and to make recommendations to the Town Board, Planning Board, and Zoning Board of Appeals. The Town Board further finds that the cost of retaining such competent consultants, planners, engineers and attorneys should be paid by those who seek to profit or otherwise gain from such developments rather than from general Town funds, which are raised by assessments generally paid by taxpayers of the Town.

**Section D. Reimbursement Requirement, Applicability.**

In connection with any application to the Town, including but not limited to, an application for a permit, including a special use permit, site plan approval, subdivision approval, zoning amendment, variance request, rezoning application, or any other application to the Town of Henrietta, the Town may employ professional consultants, legal counsel, professional engineers, professional planners, and/or other qualified professionals to provide assistance and advice in the review of any application, including, but not limited to, for example, acquiring legal advice, traffic analysis, landscaping analysis, historical analysis, architectural analysis, on-site investigation, evaluation and inspection; verification of the accuracy of information submitted; evaluation of the adequacy of plans and the sufficiency of submitted reports; study of the impact of proposals upon the resources and environment of the Town (including SEQR), preparation and/or review of environmental impact statements; review of the design and layout of improvements; inspection of installed improvement; and other services or technical assistance as the Town deems necessary for its review of such applications.

**Section E. Escrow Deposit.**

**1. Costs to Be Borne by Applicant.**

All costs incurred for the consulting services described herein shall be borne by the applicant. A deposit may be required in advance to cover the estimated cost of these services.

**2. Escrow Requirement and Amount.**

Whether an escrow deposit will be required in advance, and the amount of money initially deposited, shall be based on the estimated cost to the Town of reviewing the particular type of application. The reviewing board may consider the consultant and professional review expenses incurred by neighboring municipalities in reviewing similar applications. The reviewing board may also consider the Town's past cost in reviewing similar applications. In establishing whether a deposit shall be required, and the amount thereof, the Town may take into consideration the size, type and number of buildings to be constructed; the number of lots proposed; the topography, soil conditions, and other environmental conditions at such site; the infrastructure proposed in the application; any special conditions the reviewing board may deem relevant; and any other factors the Town may find relevant.

**3. Funding of Escrow**

Where an escrow is required, if at any time during the review and processing of an application there shall be insufficient monies on hand to the credit of an applicant to pay incurred costs, or if it shall reasonably appear to the reviewing board that such monies will be insufficient to meet anticipated costs, the Town shall cause the applicant to deposit additional sums as the board deems necessary or advisable in order to meet such expenses or anticipated expenses.

**4. Additional Fees**

The review expenses provided for herein are in addition to application and other fees required pursuant to other applicable provisions of the Town of Henrietta's laws, rules and regulations.

**5. Limitation on Use of Funds**

Monies deposited by applicant pursuant to this section shall not be used to offset the Town's general expenses for the several boards or its general administrative expenses. Employee costs are not

reimbursable. In no event shall the applicant's required responsibility be greater than the actual cost to the Town of such engineering, planning, legal or other consulting or professional services, which cost shall be reasonable such that it generally is comparable to costs of such services in the open market for similar services and projects.

#### 6. Administration of Escrow

Where an escrow account is required, the applicant shall deposit the required amount with the Town Clerk in the form of a certified check made payable to the Town of Henrietta. Upon receipt, the Town Clerk shall cause such monies to be placed in a separate non-interest-bearing account in the name of the Town and shall keep a separate record of all such monies deposited and the name of the applicant and project for which such sums were deposited.

### Section F. Payment of Consultant Costs.

#### 1. Vouchers and Billings

Upon receipt and approval by the Town Board of itemized invoices from consultants for services rendered on behalf of the Town regarding a particular application, where an escrow is established, the Supervisor shall cause vouchers to be paid out of the monies so deposited. The record of such account shall be debited accordingly. Where there is no escrow requirement, the fees shall thereafter be billed on a monthly basis and paid by the applicant within 30 days. The consultant shall make copies of all vouchers available to the applicant at the same time the vouchers are submitted to the Town; copies of the vouchers may be redacted to protect proprietary information and/or legally privileged communications between the Town officials and the consultants.

#### 2. Incurring of Charges

The Town Board shall review and audit all such vouchers and shall approve payment of only such professional and consultant charges as are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of the applications. A charge or part thereof is reasonable in amount if it bears a reasonable relationship to the average charge by consultants to the Town for services performed in connection with the review of a similar application. A charge or part thereof is necessarily incurred if it was charged by the consultant for a service which was rendered in order to protect or promote the health, safety or other vital interests of the residents of the Town, and/or to protect public or private property from damage.

#### 3. Payment to Town Only

In no event shall an applicant make direct payment to any Town consultant.

#### 4. Return of Unused Escrow Funds

After the reviewing board has rendered its decision on an application, or upon the withdrawal of an application by the applicant, the remaining balance of the deposit in excess of actual incurred costs, if any, shall be returned to the applicant without payment of interest within 60 days of the date of the

decision or date of the withdrawal. The Town will also provide a statement of the costs paid from the escrow account.

Section G. Failure to Comply

1. Suspension of Review

In the event the applicant fails to deposit or timely pay the requested professional and consultant review costs with the Town, any application review, approval, permit or certificates of occupancy shall be withheld or suspended by the reviewing board, officer or employee of the Town until such monies are deposited or paid in full with the Town Clerk.

2. Liability of Applicant

The owner(s) of the subject real property, if different from the applicant, shall be jointly and severally responsible to reimburse the Town of Henrietta for costs associated with professional and consultant review pursuant to this Chapter. In order for an application to be complete, the applicant shall provide the written consent of all owners of the subject real property, authorizing the applicant to file and pursue land development proposals and acknowledging potential landowner responsibility, under this article, for engineering, legal and other consulting fees incurred by the Town for the review of the application.

3. Failure to Reimburse

In the event of failure to reimburse the Town for such fees, the following shall apply:

- a. The Town may seek recovery of unreimbursed engineering, legal and other consulting fees by action venued in a court of appropriate jurisdiction, and the defendants shall be responsible for the reasonable and necessary attorney's fees expended by the Town in prosecuting such action.
- b. Alternatively, and at the sole discretion of the Town Board, a default in reimbursement of such engineering, legal, professional and consulting fees expended by the Town shall be remedied by charging such sums against the real property which is the subject of the land development application, by adding that charge to, and making it a part of, the next annual real property tax assessment roll of the Town. Such charges shall be levied and collected at the same time and in the same manner as Town-assessed taxes and shall be applied in reimbursing the fund from which the costs for the engineering, legal, professional and consulting fees were defrayed. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the Town Board to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 15 days after its mailing.

Section H. Validity and Severability

Should any word, section, clause, paragraph, sentence, part or provision of this local law be declared invalid by a Court of competent jurisdiction, such determination shall not affect the validity of any other part hereof.

Section I. Repeal, Amendment and Supersession of Other Laws

All other ordinances or local laws of the Town of Henrietta which are in conflict with the provisions of this local law are hereby superseded or repealed to the extent necessary to give this local law force and effect during its effective period.

Section J. Effective Date

This Local Law will take effect upon filing in the office of the New York State Secretary of State.