

**TOWN OF ANCRAM  
LOCAL LAW NO. / OF 2004**

**BE IT ENACTED** by the Town Board of the Town of Ancram as follows:

**SECTION 1.**            **Legislative Finding, Intent, and Purpose.**

The Town Board enacts this Local Law to provide a mechanism for the reimbursement of fees and expenses which would otherwise be paid by the assessment of the Taxpayers of the Town of Ancram to defray the cost to the Town for the retention of competent engineering, planning, legal, and other consultants to review projects before the Town of Ancram Planning Board, and/or Zoning Board of Appeals for which Special Permit, Variance, Site Plan Review and Approval and/or subdivision review and approval is sought by an applicant. The Town Board finds that it is essential for the Town to be able to retain the services of competent engineers, planners, lawyers and other professional consultants to assist the boards in the review such applications. The Town also finds that it is necessary and proper to establish a procedure to be followed requiring the deposit of those funds in a separate account and requiring that payments from that account be made only upon receipt and approval by the Town Board of itemized vouchers from its consultants, and that such fees of the consultants be reasonable and necessary.

**SECTION 2.**            **Professional Fees.**

A.     The Ancram Planning and Zoning Boards, and Town Board, in the review of any applications pending before said Boards, may retain such engineering, planning, legal, technical or environmental consultant, or professional(s) ("consultant services") as such Boards shall deem reasonably necessary to assist the Board in its review of such application.

B.     The applicant shall reimburse the Town of Ancram for the cost of such consultant services.

C.     The Town Board shall review and audit all vouchers submitted by such consultants and shall approve payment only if such consulting fees and disbursements as are reasonable in amount and necessarily incurred by the Town in connection with the review, consideration and approval of the proposed project. For purposes of the foregoing, a fee, or part thereof, shall be deemed reasonable an 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 similar projects in the Town, and if there are no similar projects in the Town, then for similar projects located in Columbia and Dutchess Counties and the surrounding area, to the extent that such similar projects may exist. The Town Board may take into consideration the size, type and nature of the project, together with such special features including, but not limited to, topography, soil conditions, water, drainage conditions and any special conditions or considerations as the Town Board may consider relevant.

D. A fee and expense, or part thereof, is necessarily incurred if it was charged by the engineer, attorney, planner or other professional 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 which otherwise may be caused by the proposed land use or development; to insure or assist in compliance with laws, regulations, standards or codes which govern land use and development; to insure or assist in the orderly development and sound planning of a land use or development; to insure 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 interest that the Town Board.

may specify as relevant.

E. At such time as the application is approved or denied by the Board, the Town shall refund to the applicant, the deposit required pursuant to Section 3 less any sums expended by the Town to engage services of attorneys, engineers, planners and other qualified professional consultants to provide assistance to said Board relating to said project. A copy of the computation of said sums so expended shall be provided to the applicant at the time that the Town shall calculate the refund, if any, due the applicant.

### **SECTION 3. Escrow Accounts.**

A. At the time of submission of any application, or thereafter, an escrow account shall be established, from which withdrawals shall be made to reimburse the Town for the costs of consultant services. The applicant shall then provide funds to the Town for deposit into such account in an amount to be determined by the Board with the advice and recommendation of the Town's Engineer, Attorney and/or Planner based on their evaluation of the nature and complexity of the application, using the following schedule as a general guideline, with the decision of the reviewing board to be final and conclusive on the applicant:

1. For residential projects, the total project value shall be calculated based on the actual purchase price of the land or the fair market value of the land, whichever is higher, plus the cost of all required site improvements. In the case of such projects, the escrow deposit shall be no more than two percent of the total project value.

2. For commercial and industrial projects, the total project cost shall be calculated on the actual purchase price of the land or the fair market value of the land, whichever is higher, plus the cost of supplying utility service to the project, the cost of site preparation and the cost of labor and material as determined with reference to a current cost data publication in common use. In the case of such projects, the escrow deposit shall be no more than one percent of the total project value.

3. For projects involving the extraction of minerals, the total project value shall be calculated on the cost of site preparation for mining. Site preparation cost means the

cost of clearing and grubbing and removal of over-burden for the entire area to be mined plus the cost of utility services and construction of access roads. Such costs are determined with reference to a current cost data publication in common use. **The escrow deposit shall be two percent of the total project value.** For those costs to be incurred for phases occurring three or more years after issuance of a permit, the project value shall be determined using a present value calculation.

B. The applicant shall be provided with copies of vouchers submitted for payment by the consultants for such services as they are submitted to the Town.

C. All sums paid by the applicant shall be deposited in a separate account by the Town from which withdrawals as provided in this local law shall be made.

D. When the balance in such escrow account is reduced to one-third (1/3) of its initial amount, the Town shall advise the applicant and the applicant shall deposit additional funds into such account to bring its balance up to the amount of the initial deposit. If such account is not replenished within ten (10) business days after the applicant is notified, in writing, of the requirement for such additional deposit, the reviewing Board may suspend its review of the application. An application shall be deemed incomplete if any amount shall be outstanding.

E. A building permit or other permit being sought shall not be issued unless all professional review fees charged in connection with the applicant's project have been reimbursed to the Town by the applicant.

F. All fees required pursuant to this Local Law shall be collected by the Town.

G. This Local Law shall be applicable to applications pending at the time it shall become effective unless a prior agreement concerning such fees between the applicant and the Town has been executed.

#### **SECTION 4. Severability.**

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Ancram Town Board hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

#### **SECTIONS. Repeal.**

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the

controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Ancram Town Board hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

**SECTION 6:**            **Supercession.**

This Local Law is enacted under the authority of subparagraphs (a)(1)(2)(d)(iii) of the Municipal Home Rule Law Section IO(1)(ii), and Municipal Home Rule Law Section 22. To the extent that Sections 274-a, 276 and 277 of the Town Law are inconsistent with this Local Law, it is the intent of the Town Board to supercede these Sections of the Town Law by virtue of this Local Law.

**SECTION 7.**            **SEORA Review.**

In the event that a Positive Declaration is made in accordance with the New York State Environmental Quality Review Act (SEQRA), all subsequent consultant review fees that are necessary for the preparation or review of an EIS shall be reimbursed to the Town in accordance with the procedures established under SEQRA. The applicant shall maintain the basic escrow account for the continued review of the application that is not directly related to the preparation or review of an EIS. The Town may require the applicant to establish a separate escrow account for the consultant services costs necessary for the preparation or review of an EIS. All deposits, reimbursements and refunds shall be made in accordance with the provisions of this Local Law.

**SECTION 8.**            **Effective Date.**

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.