

Town of New Scotland

Proposed
Local Law B of the Year 2018

A local law authorizing the Planning Board, Zoning Board of Appeals, and Town Officials and Departments with approval authority to retain consultants and experts.

Be it enacted by the Town Board of the Town of New Scotland as follows:

Section I. Purpose and Findings

On occasion, the Planning Board and Zoning Board of Appeals need the assistance of consultants and planning professionals with technical expertise to evaluate zoning issues, and the impacts of development proposals. There is no express authority in the Town Code or Zoning Law authorizing boards to hire such consultants, and there is no express authority to charge applicants for the cost of independent reviews by consultants retained by a board. The common law of the State, however, allows municipalities to charge applicants for the reasonable cost of such services. Without independent consultants, the planning and zoning boards are forced to rely on the opinions expressed, and evaluations prepared, by consultants retained by an applicant. Independent analysis by qualified consultants is sometimes necessary: (1) to ensure the reliability of reports prepared by an applicant's consultant; and (2) to develop alternative approaches and solutions to planning and zoning proposals. The proposed law will authorize boards and town officials with decision making and permitting authority to retain independent consultants and charge the cost of such professional services to the applicant when the circumstances require independent consultants.

In addition, the Town currently lacks a full-time planner. The proposed law expressly authorizes the Town Board to establish a schedule of fees associated with the services of the Town's designated professional planner, which shall be charged to applicants seeking permits and approvals. The fees shall be based on the estimated, reasonable cost of processing the application. The proposed law also authorizes town boards and officials to use the Town's designated professional planner with respect to services rendered in connection with applications to such boards and officials and to charge the applicant for such services.

The Town finds that retention of independent, qualified professionals is essential to guide the zoning and planning boards, and make sound zoning and planning decisions to protect the health and welfare of the Town and its residents, and to fulfill the Town's obligations to comply with state and federal laws, including the State Environmental Quality Review Act.

Section II. Title

This Local Law shall be known and cited as "A Local Law of the Town of New Scotland, authorizing the Planning Board, Zoning Board of Appeals, and Town Officials and Departments with approval authority to retain consultants and experts."

Section III. Authority

This law is enacted by the Town Board of the Town of New Scotland pursuant to its authority to adopt Local Laws under Article IX of the New York State Constitution, Article 18 of the General Municipal Law, and the Municipal Home Rule Law.

Section IV. Amendments

- A. Article XIV of Chapter 190 of the Town Code of the Town of New Scotland is hereby amended by adding the following:

§ 190-100.1. Professional Assistance/Retention of Experts/Authority to Engage Consultants.

- A. Any board or department of the Town (including the Planning Board, Zoning Board of Appeals, and Town Board) charged with making determinations on applications, appeals and other matters within their powers and duties may employ the services of professional consultants. The applicant shall be required to bear the reasonable expense of such services. Prior to engaging a consultant, the board or department shall request that the consultant provide an estimate of the cost of the services to be provided which shall be provided to the applicant. The board shall review the estimate to determine whether the proposal/estimate is reasonable in light of: (i) the services to be provided; (ii) the scale of the development proposal; and (iii) the complexity of the relevant issues. The cost charged to the applicant for consultant's services shall not exceed the actual cost incurred by the Town. In addition, if deemed necessary by the reviewing department or board, the applicant shall be required to bear the cost of on-site inspection by any consultants engaged by a department or board.
- B. From time to time, the Town Board shall adopt, by Resolution, a schedule of fixed fees to be charged to applicants for initial application review by the Town Designated Planning Professional ("TDPP") under a Master Services Agreement ("MSA"). These fees shall be based on the estimated, reasonable cost of the TDPP's initial review of certain categories or types of applications. If additional services are needed from the TDPP, the board or department reviewing the application can request an estimate from the TDPP of the scope of additional services needed and the estimated fees and costs associated with TDPP review. The board shall

review the estimate to determine whether the estimate is reasonable. If so, the estimate shall be provided to the applicant, and the applicant shall then deposit funds in escrow with the Town to cover the cost of such review. All reasonable fees incurred by the Town, or any department or board, for review of an application, appeal or other matter within the scope of their powers and duties shall be paid for by the applicant according to the rates charged by the TDPP in the MSA.

C. Payment for the services of any consultant, the TDPP, and/or any engineer retained by the board or department is to be made from funds deposited by the applicant with the Town in an escrow account(s) for such purpose.

D. Prior to the commencement of any work associated with an application, appeal or other matter, or at such other time as directed by the Town, it shall be the responsibility of the applicant to submit to the Town check(s) in amounts equal to the reasonable estimate of the consultant or TDPP for the cost of services to be rendered. This sum shall be released by the Town to said consultant or engineer in payment for the services rendered to it upon acceptance by the Town of said services, and approval of the consultant's voucher.

E. In the event that an application, appeal or other matter requires Town Board action for review or implementation, including consideration of zoning issues, variances, contracts, bonding, financing or other associated actions required by virtue of an application under local zoning law, the consultants retained by the Planning Board and/or the Zoning Board of Appeals on behalf of the Town as outlined in Subsections A through C above shall provide to the Town Board such services as may be required by it in connection with Town Board review of the application and associated actions. The cost of the consultant's services provided under this section shall not exceed the reasonable cost of such services and the estimate(s) provided by the consultant in advance of providing such services. The purpose of this provision is to avoid duplication of services and provide for coordinated review of the entire application for approvals and permits.

Section IV. Severability

If any word, phrase or part of this law shall be declared invalid or unconstitutional, the same shall be severed and separate from the remainder of the law, and said remainder shall continue in full force and effect.

Section V. Effective Date

This local law shall be effective upon filing with the Secretary of State.