



Community Matters Institute

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M E M O

To: Dawn Collins, CMC, Town Administrator/Clerk

From: Barb Cole, Executive Director, CMI

CC: Julia Stambaugh, Deputy Town Clerk, Mike Davenport, CMI and Matt Krob, Town Attorney

Date: Tuesday, January 17, 2023

RE: Cost reimbursement agreement and fees

Most of the small statutory towns we work with have limited staff. When larger projects are presented to Town Staff, staff often hires consultants including the contracted Town Engineer, Town Attorney, land use planner, licensed surveyor, traffic engineer or other specialists such as wetlands experts to help in the processing and review of these developments.

To cover the costs, most communities require a fee as well as a cost reimbursement to cover the costs of such reviews. CMI recommends that the following new section be inserted after this section of the text.

Code Amendment to clarify fee, cost reimbursement and deposit:

17.12.050 Land use procedures. (amended)

(a) The applicant shall complete an application form and tender the required application fee and sign the cost reimbursement agreement and any required deposit to the town clerk.

(b) The town clerk, within 15 days after receipt, shall review the application for completeness with town department staff and respond to the applicant. The applicant shall be notified if the application is complete and said application will then follow the application procedures for each type of application.

(Code 1973, § 17.12.050; Ord. No. 2-1980, § 9, 1980)

17.12.055 Application Fees, Cost Reimbursement Agreement, and Deposits. (NEW)

(a) All applications submitted to the Town pursuant to this chapter are subject to a non-refundable fee to cover the cost of review by the Town and notice and publication expenses. Such fees are set by the Board of Trustees and may be amended by Resolution.

(b) In addition to the fees provided for in subsection (a), the applicant shall enter into a cost reimbursement agreement to reimburse all of the Town's non-staff costs and expenditures in reviewing an application including but not limited to attorney's fees, consultant engineer's fees, consultant surveyor's fees, consultant planner's fees and other hired consultants providing services to the town with respect to the application. The fee and cost reimbursement agreement are necessary to cover costs for review by and consultation with any other expert whom the Town may reasonably employ in reviewing an application. [Optional- Where actual costs in incurred by the Town exceed the nonrefundable fee, the applicant is liable for such costs.]¹

¹ Municipalities can choice if the fee should be subtracted from any cost incurred or simply be used to cover staff time.

- (c) Where the Town Administrator or Town Administrator's designee finds it necessary for the security of the town, the Town Administrator or Town Administrator's designee may require an applicant to deposit funds with the Town, prior to the Town considering any application pursuant to this section, to cover the anticipated costs and expenditures in reviewing the application.

Fees, Deposits, and Cost Reimbursement Agreements, .

Recommended Fees

In all cases, fees should be non-refundable and paid at the time of application. In one municipality, the El Paso-based municipality collected a deposit that was refundable, but no one on staff was tracking the expenses or lack thereof. It became an accounting nightmare and a potential legal issue if anyone came forward to challenge the non-reimbursement of a deposit for a project that did not go forward.

Deposit Method

Many municipalities use the deposit method to cover the cost of consultants that assist in the review of a development application. After the initial non-refundable fee is collected, each consultant (Town attorney, town planner, town engineer, and other specialists) bills the municipality, and that invoice is passed on to the applicant for payment within 30 days.

Any application for a development process shall be accompanied by the deposit of a sum to be determined by the City to ensure payment of the City's costs incurred in processing the application and an executed agreement by which the applicant agrees to replenish the deposit when requested by the City and to pay on a monthly basis all costs incurred by the City in processing the application. The City Clerk shall send the applicant a statement of costs incurred by the City after completion of the process. Costs chargeable hereunder include but are not limited to, publication costs, postage costs, recording fees, attorney's fees, engineering fees, planning fees, administrative costs, and other professional fees. Any amount of the deposit not expended will be refunded by the City within forty-five (45) days after the applicant's withdrawal of the application or petition, or the City's final action on the application.

Cost Reimbursement Method

Cost Reimbursement Agreements are typically signed by an applicant at the same time as the General Application Form is completed. A cost reimbursement agreement is not needed for all projects. Usually, smaller simple applications do not require a cost reimbursement agreement. For example, new single-family homes, renovations, and additions normally do not require a cost reimbursement agreement. There should be a 'trigger' that is established. This is a policy decision that should be made by the Board. The agreement binds the applicant to pay all non-staff costs as drafted on the preceding page:17.12.055.

I have attached several examples of cost reimbursements from municipalities where we have previously provided services. I am confident that Krob Law also has examples from communities that they represent.

Attachments

- Examples of Cost reimbursements emailed as separate PDF files.