Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

☐ **County** ☐ **City** ☒ **Town** ☐ **Village**
(Select one:)

of New Castle

Local Law No. 6 **of the year 20** 20

A local law to create Chapter 96 of the Code of the Town of New Castle and amend Chapters
(Insert Title)
60, 108, 113, 121 and 137 concerning the reimbursement of professional review fees.

Be it enacted by the Town Board **of the**
(Name of Legislative Body)

☐ **County** ☐ **City** ☒ **Town** ☐ **Village**
(Select one:)

of New Castle **as follows:**

BE IT ENACTED by the Town Board of the Town of New Castle as follows:
Section 1. Chapter 96 of the Code of the Town of New Castle entitled " Professional Review Fees " is hereby established as follows:

CHAPTER 96 PROFESSIONAL REVIEW FEES.
§ 96-1 Purpose.
The Town of New Castle routinely engages professional consultants and legal counsel to ensure the timely and thorough review of various land use and development applications and appeals, including but not limited to those seeking subdivision approval, site plan approval, special permits and environmental permits. This chapter establishes the authority of the Town Board to impose and collect such professional consulting and legal fees as may be reasonable and necessary for the Town to ably discharge its regulatory and environmental duties under applicable law in the review of such applications and appeals.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

§ 96-2 Professional review fees.

A. The Town Board, the Planning Board, the Zoning Board of Appeals, Architectural Review Board, Environmental Review Board and Building Inspector may each retain the services of such planner, engineer, environmental expert, attorney or other professional consultant as they deem necessary to ensure the timely and thorough review of any application or appeal that comes before them. In such instances, the applicant shall reimburse the Town for all reasonable and necessary fees and expenses incurred by the Town for such services, in addition to any other fee that may be payable in connection with such matters.

B. All charges for consulting services shall be audited by the Director of Planner, the Building Inspector and/or the Town Engineer. Reimbursable applicant costs shall be limited to those that are reasonable in amount and are necessary for the Town's review and action on the application in accordance with the law.

   (1) Fees charged by such consultants shall be deemed reasonable when in accord with fees usually charged for such services in the metropolitan New York region and pursuant to a contractual agreement between the Town and such consultant.

   (2) Such consulting charges shall be deemed necessarily incurred when the underlying services were performed to protect or promote the health, safety or other interests of the residents of the Town, including without limitation services to assure the timely and thorough review of potential adverse environmental impacts; to protect neighboring properties from excessive surface water runoff, nuisance or other harmful impact; to assure the proper and timely construction of roads, drainage facilities, utilities, sidewalks and public spaces; to protect the legal interests of the Town, including receipt by the Town of good and proper title to dedicated roads and other facilities and the avoidance of claims and liability; and to protect such other interests as the Town may deem relevant based upon any of the features, conditions or considerations associated with the application or appeal under review.

C. All such fees shall be paid by the Town upon submission of a Town voucher, and the applicant shall reimburse the Town for the costs of such consultant upon submission of a copy of the voucher or at the discretion of the reviewing board, in accordance with **§ 96-3** of this chapter.

D. Proof of payment of all professional consultant review fees shall be obtained by the applicant from the clerk of the board having jurisdiction over the application and presented to the reviewing board having jurisdiction over the application. No building permit or certificate of occupancy shall be issued nor shall any use or work be authorized under any resolution of approval unless all professional review fees charged in connection with the applicant's project have been reimbursed to the Town.

E. In the event that an application is required to be reviewed by more than one reviewing board, then in such event and to the extent applicable, each such reviewing board shall use the same consultant who shall in such case prepare one report providing the data, information and recommendations requested. In all instances, duplication of consultant's reports shall be avoided wherever possible in order to minimize the cost of such consultant's reports to the applicant.

§ 96-3 Escrow accounts.

The reviewing board, the Director of Planning, the Building Inspector or the Town Engineer may require the establishment of an escrow account, from which withdrawals shall be made to reimburse the Town for the cost of professional consultant review fees and professional staff services, including but not limited to planning, engineering, environmental and legal expenses actually incurred by the Town. All costs charged to the applicant shall be those reasonable and necessary to the decision-making function of the reviewing board as set defined in **§ 96-2B**. The applicant shall then provide funds to the Town for deposit into such account in an amount to be determined by the reviewing board, the Director of Planning, the Building Inspector or the Town Engineer based on an evaluation of the nature and complexity of the application. Such a deposit in escrow may be required at any stage in the application process, including but not limited to pre-application discussions with the applicant. The applicant shall be provided with copies of any Town voucher for consultant fees as they are submitted to the Town and with Town staff time records for services for which reimbursement is sought. When the balance in such escrow account is reduced to 1/3 of its initial amount, 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 30 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. A building permit or certificate of occupancy or use shall not be issued unless all such applicant costs have been reimbursed to the Town. After all pertinent costs have been paid, the Town shall refund to the applicant any funds remaining on deposit.

§ 96-4 Collection of fees.

All fees required pursuant to this chapter shall be collected by the clerk of the board having jurisdiction over the application.

§ 96-5 Nonpayment of fees.

Any fee imposed pursuant to this chapter that remains unpaid shall become a lien against the real property for which the application was filed if not paid within 30 days of written demand. Such unreimbursed fees, including, but not limited to, application fees and professional review fees, shall thereupon be levied against the said premises in the same manner as a tax on real property, in addition to all other taxes, fees, rents or charges that would otherwise be so levied. In the event an application is filed in connection with more than one tax lot, then the Town Receiver of Taxes shall distribute such levy equally among each such tax lot without regard to assessed value or any other factor.

Section 2. Chapter 60, Section 410, Subsection O(6) of the Code of the Town of New Castle entitled "Escrow review costs" is hereby amended as follows:

§ 60-410 District regulations.

...

O. Small wireless facilities.

...

(6) Escrow review costs. In accordance with § **96-3**, and to the extent permissible under federal law, for small wireless facility applications, the applicant shall be required to provide funds to an escrow account held by the Town to allow the Planning Board to retain such technical experts and other consultants as may be necessary to review the proposal, including, but not limited to, the review of financial and technical aspects of the proposal and of the financial, legal and technical practicability of alternatives which may be available to the applicant.

Section 3. Chapter 60, Section 430, Subsection O(14)(i) of the Code of the Town of New Castle entitled "Escrow review costs" is hereby amended as follows:

§ 60-430 Permitted special uses.

...

O. Additional standards and requirements for particular uses.

...

(14) Non-small wireless facilities.

...

(i) Escrow review costs. In accordance with §**96-3**, and to the extent permissible under federal law, for non-small wireless facility applications, the applicant shall be required to provide funds to an escrow account held by the Town to allow the Planning Board to retain such technical experts and other consultants as may be necessary to review the proposal, including, but not limited to, the review of financial and technical aspects of the proposal and of the financial, legal and technical practicability of alternatives which may be available to the applicant.

...

Section 4. Chapter 60, Section 430, Subsection O(14)(t) of the Code of the Town of New Castle entitled "Operational characteristics" is hereby amended as follows:

§ 60-430 Permitted special uses.

...

O. Additional standards and requirements for particular uses.

...

(14) Non-small wireless facilities.

...

(t) Operational characteristics. Unless otherwise superseded by the Federal Communications Commission (FCC), the design and use of the proposed non-small wireless facility, including its cumulative impact with other existing and approved facilities, shall be certified to conform with the maximum NIER exposure standards promulgated by the FCC, as amended. Said certification shall include a report prepared by a licensed professional electrical engineer with expertise in radio communications facilities and/or a health physicist acceptable to the Planning Board. A copy of such certification report shall be submitted to the Planning Board prior to commencing operation of such facility, and a copy shall be filed with the Town Building Department. Except as otherwise provided by law, the Planning Board may require annual certification of conformance with the applicable emissions standards. Additionally, copies of certification reports shall be submitted to the Planning Board whenever they are required to be submitted to the FCC. The Planning Board may hire a qualified professional of its choosing to review and confirm such initial and annual subsequent certification report(s), the cost of which shall be reimbursed by the applicant in accordance with the professional review fee reimbursement procedures set forth in Chapter 96, Professional Review Fees of this chapter. Any violation of the emissions standards shall require immediate discontinuation and correction of the use responsible for the violation. Any such violation of these requirements of the Zoning Law or the conditions of special permit or site development plan approval shall be deemed to be an offense punishable by fine and/or imprisonment in accordance with § 60-530 of this chapter.

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Section 5. Chapter 60, Section 430, Subsection O(14)(x) of the Code of the Town of New Castle entitled "Post-installation inspection and report" is hereby amended as follows:

§ 60-430 Permitted special uses.

...

O. Additional standards and requirements for particular uses.

...

(14) Non-small wireless facilities.

...

(x) Post-installation inspection and report. A field report identifying the non-small wireless facility coverage area, maximum capacity, committed capacity and unused capacity, if any, and the identity of any collocated users of such facility shall be submitted to the Planning Board prior to commencing operation of such facility, and a copy shall be filed with the Town Building Department. The Planning Board may hire a qualified professional of its choosing to review and confirm such field report, the cost of which shall be reimbursed by the applicant in accordance with the professional review fee reimbursement procedures set forth in Chapter 96, Professional Review Fees.

Section 6. Chapter 60, Section 430, Subsection O(14)(y) of the Code of the Town of New Castle entitled "Annual inspection and report" is hereby amended as follows:

§ 60-430 Permitted special uses.

...

O. Additional standards and requirements for particular uses.

...

(14) Non-small wireless facilities.

...

(y) Annual inspection and report. A monopole or wireless structure over 100 feet in height shall be inspected by a licensed professional engineer retained by the applicant on an annual basis, and at any other time upon a determination by the Town Building Department that the monopole or wireless structure may have

sustained structural damage. A copy of the inspection report shall be submitted to the Planning Board, and a copy shall be filed with the Town Building Department. The Planning Board may hire a qualified professional of its choosing to review and certify such inspection report, the cost of which shall be reimbursed by the applicant in accordance with the professional review fee reimbursement procedures set forth in Chapter 96, Professional Review Fees.

Section 7. Chapter 60, Section 560 of the Code of the Town of New Castle entitled "Fee schedule" is hereby amended as follows:

§ 60-560 Fee schedule.

A. There shall be a fee charged in connection with the administration and enforcement of this chapter for each of the following applications in such amounts as set forth by resolution of the Town Board in the Master Fee Schedule, which may be amended, except that no fees shall be required from the Town, school, fire or other district:

(1) Application for site development plan approval for all site plans, including the MFDRD, plus either a specified fee per dwelling unit or per parking space, whichever is greater.

(2) Application for a special use permit, excluding the MFDRD, plus either a specified fee per dwelling unit or per parking space, whichever is greater.

(3) For other applications to the Zoning Board of Appeals, plus the cost of advertising a public hearing and the cost of stenographic services to record the hearing if such record is requested by the applicant or required by the Zoning Board of Appeals.

(4) Application for a Zoning Map amendment.

(5) Application for a zoning text amendment.

(6) Application for a sign permit.

B. Nonpayment of fees. Any fee imposed pursuant to this chapter that remains unpaid shall become a lien against the real property for which the application was filed if not paid within 30 days of written demand. Such unreimbursed fees, including, but not limited to, application fees and professional review fees, shall thereupon be levied against the said premises in the same manner as a tax on real property, in addition to all other taxes, fees, rents or charges that would otherwise be so levied. In the event an application is filed in connection with more than one tax lot, then the Town Receiver

of Taxes shall distribute such levy equally among each such tax lot without regard to assessed value or any other factor.

Section 8. Chapter 108, Section 7 of the code of the Town of New Castle entitled "Fees" is hereby amended as follows:

§ 108-7 Fees.

An application fee and an inspection fee as set forth by resolution of the Town Board in the Master Fee Schedule, which may be amended, shall be submitted with the application.

Section 9. Chapter 113, Section 10, Subsection D of the Code of the Town of New Castle entitled "Reimbursement of professional review service fees," is hereby deleted and repealed in its entirety.

§ 113-10 General procedure.

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Section 10. Chapter 113, Section 12, Subsection A of the Code of the Town of New Castle entitled "Application for approval," is hereby amended as follows:

§ 113-12 Preliminary plat.

A. Application for approval. Prior to requesting approval of a proposed final subdivision plat, the applicant shall file an application for approval of a preliminary plat, in duplicate, on forms available from the Planning Board Secretary and in an electronic file format. Such application shall be filed with the Planning Board Secretary at least two weeks prior to the regular Planning Board meeting at which it will be considered and shall:

   (1) Be accompanied by an application fee in an amount as set forth by resolution of the Town Board in the Master Fee Schedule, which may be amended, plus an additional fee as set forth by resolution of the Town Board in the Master Fee Schedule, which may be amended, for each lot shown on the preliminary plat, plus any additional amount required pursuant to **§96-3**.

   (2) Comply with all requirements of these regulations and Chapter 60, Zoning.

(3) Be accompanied by nine copies each of the preliminary plat, including all contiguous land of the applicant and preliminary construction plans, showing all items listed in Article VI of these regulations.

(4) Be accompanied by a positive transparency reduction, 10 inches by 10 inches, of the preliminary plat.

Section 11. Chapter 121, Section 5, Subsection G of the Code of the Town of New Castle entitled "Professional review fees," is hereby deleted and repealed in its entirety.

§ 121-5 Permit application process; approving authority.

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(1)

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Section 12. Chapter 137, Section 5, Subsection L of the Code of the Town of New Castle entitled "Professional review fees," shall be deleted and repealed in its entirety.

§ 137-5 Permits.

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Section 13. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, Chapters 60, 108, 113, 121 and 137 of the Code of the Town of New Castle is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 14. Numbering for Codification

It is the intention of the Town of New Castle and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the Town of New Castle; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section" or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

Section 15. Severability.

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 16. Effective Date

This local law shall take effect immediately upon filing with the Office of the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 6 of 2020 of the ~~(County)(City)~~(Town)~~(Village)~~ of New Castle was duly passed by the Town Board on May 12 2020, in accordance with the applicable
(Name of Legislative Body)
provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)
(Name of Legislative Body)
(repassed after disapproval) by the _____ and was deemed duly adopted
(Elective Chief Executive Officer)*
on _____ 20☐☐, in accordance w ith the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)
(Name of Legislative Body)
(repassed after disapproval) by the _____ on _____ 20____.
(Elective Chief Executive Officer)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)
(Name of Legislative Body)
(repassed after disapproval) by the _____ on _____ 20____. Such local
(Elective Chief Executive Officer)*
law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)
I hereby certify that the local law annexed hereto, designated as local law No._____ of 20_____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20_____, became operative.

6. (County local law concerning adoption of Charter.)
I hereby certify that the local law annexed hereto, designated as local law No._____ of 20_____ of the County of _____State of New York, having been submitted to the electors at the General Election of November _____ 20_____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)
I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____ above.

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: May 13, 2020