




MEMORANDUM

TO: Bill Johnston, Chairperson
Economic and Community Development Committee

FROM: William J. Heniff, AICP, Director of Community Development 

DATE: March 14, 2016

SUBJECT: Amendments to Chapter 16 of the Village Code – Cost Recovery for Economic Incentive Review

Chapter 16 of the Lombard Code of Ordinances currently provides for the reimbursement of third party out-of-pocket costs associated with petitions that are seeking annexation, zoning and/or development approvals or licensure. Such past costs have included such professional consultant items such as traffic studies, engineering activities or specific services requested by the Village as part of the public hearing process. In some cases, legal costs are also included. However existing code provisions do not specifically provide for reimbursement of third party costs if the request is not associated with a development petition.

As the Economic and Community Development Committee (ECDC) members are aware, the Village recently adopted an Economic Incentive Policy and staff is in the process of completing agreements for final Village Board consideration. In these agreements it is commonplace to include reimbursement provisions. However, there may be cases in which the Village is seeking third-party services to determine if an economic incentive agreement is even worthy of consideration. Additionally, if an agreement was created but was never executed by the parties, either through a Village Board denial or project abandonment by the developer, there would not be a mechanism in place to reimburse the Village for external costs.

Staff is bringing forward for ECDC consideration the attached amendment to Chapter 16 of the Village Code to expand the cost recovery provisions. The amended language would provide for reimbursement of third-party costs associated with economic agreements, regardless of whether there is a companion zoning petition or not. This provision would also provide for pre-payment provisions, caps on consultant costs and would identify the specific tasks to be undertaken. Such costs would be approved by the requesting party prior to any external work being performed.

RECOMMENDATION:

Staff recommends that the ECDC recommend approval to the Village Board of amendments to Chapter 16 of the Village Code as it pertains to cost recovery for economic incentive requests.

ORDINANCE NO. _____

**AN ORDINANCE
AMENDING TITLE I, CHAPTER 16, SECTIONS 16.01, 16.03 AND 16.04
OF THE LOMBARD VILLAGE CODE IN REGARD TO COST RECOVERY**

BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That Title I, Chapter 16, Section 16.01 of the Lombard Village Code is amended to read in its entirety as follows:

“§ 16.01 Costs to be recovered.

The costs as described in § 16.02 below shall be:

- (A) recoverable and paid by the applicant/petitioner whenever such costs are actually incurred by the Village in reviewing for approval a petition or an application for annexation, subdivision, zoning amendment, variation, conditional use, special use, building permit, liquor license, or other license or permit required by law and issuable by the Village; or
- (B) recoverable and paid by the proposed developer/developer whenever such costs are actually incurred by the Village in reviewing and analyzing a development proposal, which has not yet reached the formal petition or application stage, or an economic incentive request.”

SECTION 2: That Title I, Chapter 16, Section 16.03 of the Lombard Village Code is amended by adding the following to the end thereof:

“Notwithstanding the foregoing, the Village staff is hereby authorized to enter into an agreement with a proposed developer/developer, in substantially the form as attached to Ordinance No. _____, adopted _____, 2016, and incorporated herein by reference, (an “Agreement to Reimburse Costs”), relative to a particular development proposal and/or economic incentive request, as referenced in § 16.01(B) above, pursuant to which the proposed developer/developer shall deposit with the Village an agreed upon amount, relative to the anticipated costs (as defined in § 16.02 above) to be incurred by the Village in

regard to reviewing and analyzing said development proposal and/or economic incentive request. Said Agreement to Reimburse Costs shall also provide for an agreed upon cap on the costs (as defined in § 16.02 above) that the proposed developer/developer has agreed to pay, and for the return of any unused deposited funds, to the proposed developer/developer, upon the Village being fully reimbursed for all costs (as defined in § 16.02 above), that the Village has incurred relative to the proposed developer's/developer's development proposal and/or economic incentive request."

SECTION 3: That Title I, Chapter 16, Section 16.04 of the Lombard Village Code is amended to read in its entirety as follows:

"§ 16.04 Failure to pay.

Failure of the applicant/petitioner or proposed developer/developer to pay, as specified in § 16.03 above, or in accordance with the terms of the Agreement to Reimburse Costs referenced in § 16.03 above, if entered into, shall entitle the Village to withhold indefinitely the granting of the relief sought and/or the issuance of the permit or license, to withhold indefinitely the issuance of the next subsequent permit or license sought by the applicant/petitioner or proposed developer/developer, or to withhold indefinitely the next subsequent relief sought by the applicant/petitioner or proposed developer/developer in relation to the property that was the subject of the application/petition or development proposal/economic incentive request."

SECTION 4: That the Agreement to Reimburse Costs, as referenced in Title I, Chapter 16, Section 16.03 of the Lombard Village Code, shall be in substantially the format attached hereto as Exhibit A and made part hereof.

SECTION 5: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form, as provided by law.

Passed on first reading this _____ day of _____, 2016.

First reading waived by action of the Board of Trustees this ____ day of _____, 2016.

Passed on second reading this ____ day of _____, 2016.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this ____ day of _____, 2016.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Deputy Village Clerk

Published by me in pamphlet form this ____ day of _____, 2016.

Sharon Kuderna, Deputy Village Clerk

EXHIBIT A

AGREEMENT TO REIMBURSE COSTS

Date: _____

Requestor: _____

Affected Property: _____

Lombard, Illinois 60148

P.I.N.: __-__-__-__

Prepayment: \$____,000.00

Maximum: \$____,000.00

Recitals

WHEREAS, Requestor has requested that the Village of Lombard, Illinois (the "Village") undertake selected third party consultant services prior to the Village's formal consideration of a development proposal and/or in relation to an economic incentive request; and

WHEREAS, Section 16.01 of the Lombard Village Code identifies third party consultant costs as being "recoverable and paid by the proposed developer/developer whenever such costs are actually incurred by the Village in reviewing and analyzing a development proposal, which has not yet reached the formal petition or application stage, or an economic incentive request"; and

WHEREAS, the Village and the Requestor deem it to be of mutual benefit to provide for said third party consultant services, prior to the Village's formal consideration of a development proposal and/or in relation to an economic incentive request, to help ensure that both the Village and the Requestor have the best information available prior to formal consideration of the development proposal and/or the economic incentive request; and

WHEREAS, the Requestor is seeking the Village to undertake the following third party consultant services (the "Services"), associated with the Requestor's development proposal and/or economic incentive request, in regard to the Affected Property:

; and

WHEREAS, recognizing the unavailability of Village staff to provide the requested Services, Requestor has offered to reimburse the Village for its costs incurred in undertaking the requested Services; and

WHEREAS, the Village would not undertake the requested Services unless the Village was being reimbursed for the cost thereof by the Requestor;

NOW, THEREFORE, BASED ON THE FOREGOING, THE MUTUAL PROMISES CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED BY THE VILLAGE AND THE REQUESTOR, IT IS HEREBY AGREED BETWEEN THE REQUESTOR AND THE VILLAGE AS FOLLOWS:

1. **Requested Assistance.** Requestor has requested that the Village undertake the Services in regard to the Requestor's development proposal and/or economic incentive request relative to the Affected Property.
2. **Village Assistance.** The Village has agreed to contract with a third party consultant to perform the requested Services.
3. **Requestor Promise to Reimburse.** Requestor agrees to reimburse the Village for all of the costs of the third party consultants retained by the Village, relative to the Services. While the Village agrees to exercise reasonable control over its incurrence of costs, in regard to the Services, it does not commit that its costs will be less than a particular sum; provided, however, it is understood Requestor does not agree to pay an amount greater than the Maximum stated above, relative to the Services, except upon Requestor's express written supplemental direction to the Village. Reimbursement of third party consultant costs incurred by the Village, relative to the Services, shall be made to the Village not later than thirty (30) days following the Requestor's receipt of a copy of the third party consultant's statement relative to the Services.
4. **Prepayment of Costs.** This Agreement shall be null and void unless Requestor, within three (3) days after the date of this Agreement, pays to the Village the Prepayment stated above. This is to guarantee reimbursement to the Village, but does not replace the obligations of Section 3. above. In regard to the payment obligation set forth in Section 3. above, the Village may draw upon the Prepayment for reimbursement of the costs incurred by the Village relative to the Services.
5. **Termination.** This Agreement to Reimburse Costs shall terminate upon the completion of the Services, and the reimbursement of the Village for the costs thereof. Otherwise, this Agreement may be terminated by either the Village or the Requestor upon three (3) days prior written notice to the other party. All costs incurred by the Village prior to its sending or receipt of such notice are reimbursable hereunder. Upon the termination of this Agreement to Reimburse Costs, and the reimbursement of the Village for all costs incurred by the Village relative to the Services, if any portion of the Prepayment remains on deposit with the Village, said remaining portion of the Prepayment shall be refunded to the Requestor.

On the date shown above, the Requestor and the Village, through their authorized representatives, have entered into this Agreement.

Requestor:

By: _____
Name: _____
Title: _____

VILLAGE OF LOMBARD
By: _____
Name: _____
Title: _____