

**ORDINANCE NO.: 401**

**AN ORDINANCE TO AMEND THE CODE OF THE TOWN OF ST. MICHAELS; ADDING NEW CHAPTER 42 (FEES) TO THE CODE OF THE TOWN OF ST. MICHAELS; STATING THE POLICY OF THE TOWN REGARDING FEES AND CHARGES ASSOCIATED WITH THE EXERCISE OF CERTAIN GOVERNMENTAL FUNCTIONS; RE-ESTABLISHING A CONSOLIDATED SCHEDULE OF FEES; SPECIFYING THE APPLICABILITY OF THIS CHAPTER; PRESCRIBING CERTAIN CONDITIONS AND REQUIREMENTS APPLICABLE TO CERTAIN APPLICATIONS AND REQUESTS FILED WITH THE TOWN OF ST. MICHAELS; MAKING PROVISION FOR A WAIVER OF CERTAIN FEES; PROVIDING PROCEDURES FOR RESOLVING CERTAIN BILLING DISPUTES; PROVIDING FOR REFUNDS; ESTABLISHING THAT CERTAIN UNPAID FEES ARE TO BECOME LIENS ON PROPERTY TO BE COLLECTED IN THE SAME MANNER AS MUNICIPAL TAXES; AND GENERALLY RELATING TO THE ESTABLISHMENT AND COLLECTION OF FEES AND CHARGES FOR CERTAIN FRANCHISES, LICENSES, OR PERMITS AUTHORIZED BY LAW TO BE GRANTED BY THE TOWN OF ST. MICHAELS.**

WHEREAS, the Commissioners of St. Michaels (the "Commissioners" or "Town"), a municipal corporation, has been delegated authority pursuant to the Maryland Annotated Code, Article 23A, Section 2(b)(33) to establish and collect reasonable fees and charges for the franchises, licenses, or permits authorized by law to be granted by a municipal corporation, or associated with the exercise of any governmental or proprietary function authorized by law to be exercised by a municipal corporation;

WHEREAS, the Town provides various services, maintains certain public documents, annexes territory, regulates the use of the land, and any improvements made thereto, and processes certain applications for which fees are charged;

WHEREAS, the Commissioners sometimes find it necessary to use the services of professional consultants to assist in the review of zoning, subdivision, annexation, site plan and public information requests to better protect the health, safety and welfare of its residents;

WHEREAS, from time to time the schedule of fees for such services and the processing of such applications are reviewed and adjusted by resolution to reflect the cost to the Town;

WHEREAS, the most recent schedule of fees was adopted by the Commissioners in Resolution No. 2007-08 on May 23, 2007 (the "2007 Administrative Fee Schedule");

WHEREAS, the 2007 Administrative Fee Schedule includes several conditions applicable to all applications that must be read and agreed to in writing by the applicant before the application is considered complete;

WHEREAS, the Commissioners find that certain terms and conditions incorporated in the 2007 Administrative Fee Schedule are generally applicable to all persons making application to the Town and are appropriately suited for inclusion in the Code of the Town of St. Michaels;

WHEREAS, the Commissioners find that the costs associated with the Town's processing of certain requests, review of development applications and appeals thereof, shall appropriately be borne, in large part, by the applicant or petitioner;

WHEREAS, it is the desire of the Commissioners to amend the Code of the Town of St. Michaels by adding a new Chapter 42 (Fees) therein regarding charging for certain administrative fees and the reimbursement of costs involved in processing certain applications or in retaining independent geotechnical, hydrologic, engineering, legal, planning and other expert consulting services and clerical costs for assistance related to the review and processing of applications coming before the Zoning Inspector, and certain other officials or bodies of the Town having authority to review such applications; and

WHEREAS, for the reasons stated herein, the Commissioners deem it in the interest of the public health, welfare and safety of the citizens of the Town, and for the good government of the Town, to enact the following Ordinance.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COMMISSIONERS OF ST. MICHAELS that the Code of the Town of St. Michaels is hereby amended by adding new Chapter 42 entitled Fees as follows, with new language shown in *italics* and underlined:

Chapter 42

Fees

§ 42-01. Purpose.

*The purpose of this chapter is to provide for a consolidated schedule of fees to be charged in the administration of Town laws, ordinances, regulations and resolutions.*

§ 42-02. Policy.

*It is the stated policy of the Town to affect the following:*

- A. That the applicant for any application, license, franchise or permit set forth in this Code, anyone filing an appeal to the Board of Zoning Appeals, and anyone requesting copies of certain public records shall pay to the Town with such application or request any reasonable fees as may from time to time be established by resolution of the Town Commissioners.*
- B. That all fees and charges shall be set in such a manner as to defray the costs to the Town of reviewing, consulting, evaluating, processing, monitoring, supervising and inspecting the various applications, permits and requests referenced in this Code or as otherwise authorized by law.*
- C. That all fees and charges shall bear a reasonable relationship to the expense of regulation, but need not be uniform for all applications reviewed or approved pursuant to comparable provisions of this Code. Under no circumstance shall any fee be imposed by the Town solely for revenue-raising purposes.*
- D. That the following legal and other professional consulting fees incurred by the Town in the review, processing and evaluation of an application are to be paid by the applicant:*

(1) for review by Town officials and other qualified experts and professionals retained by the Town of any documents, plans, reports, studies, testimony or exhibits in support of any application submitted pursuant to this Code; and

(2) for legal advice and counsel provided to an authorized official, decision maker or deliberative body of the Town.

§ 42-03. Fee Schedule.

A consolidated schedule of fees shall be adopted by resolution of the Town Commissioners in accordance with the following:

- A. Consistent with the policy stated in this chapter, the Town Commissioners shall establish from time to time a schedule of fees, charges, and expenses, and a collection procedure, for the processing of applications and requests filed with the Town pursuant to this Code;
- B. The fee schedule may include application filing fees, deposit requirements or other refundable or non-refundable fees or charges to offset or pay for expenses incurred by the Town in connection with the processing of an application or request;
- C. A deposit made payable to the Town for expenses related to annexation and certain other zoning actions may be required in addition to any application fee;
- D. The fee schedule shall be posted in the Town office, and may be amended only by the Town Commissioners.

§ 42-04. Applicability.

The fees and charges established pursuant to this chapter and set forth in the fee schedule shall apply to the provisions of all applicable local laws, ordinances, regulations and resolutions adopted by the Town Commissioners and shall supersede any specific fee or charge contained or referred to in such local laws, ordinances, regulations or resolutions.

§ 42-05. Application conditions and requirements.

Every application filed, whether or not expressly so conditioned, shall be deemed to be conditioned upon payment of fees as required by this chapter. The following conditions and requirements shall apply to all applications or requests filed with the Town pursuant to this Code and the fee schedule:

- A. Third party costs. For those applications expressly designated in the fee schedule as requiring payment of certain Town expenses in addition to an application fee, the applicant shall pay the reasonable costs incurred by the Town with third parties who invoice the Town for services rendered in relation to processing the application. All such third party fees and out-of-pocket costs shall be at the rates otherwise charged to the Town by such third parties. Third party costs may include, but are not limited to, legal fees, consulting fees, court reporting, publishing and posting of public notices, printing and reproduction.
- B. Refund of deposit for expenses. For those applications or requests expressly designated in the fee schedule as requiring payment of certain Town expenses and a deposit fee - upon final disposition of the application, including any administrative or judicial appeals or withdrawal

of the application, and after first satisfying all third party costs for which the applicant is liable, the Town shall refund to the applicant the remaining balance of any deposit.

C. Billing.

(1) When applicable, the Town shall bill its third party costs directly to the applicant periodically. At any time during the processing of an application and the applicant is in arrears on payment due to the Town, all action on the application will cease until such time as this condition is satisfied.

(2) Prior to providing an applicant with a billing statement for third party costs involving legal consultation, the Town may redact specific information from the billing statement that is protected by the attorney-client privilege or is otherwise confidential. Tasks performed by the legal consultant(s) in furtherance of the application shall be identified.

(3) Failure of an applicant or property owner to receive an invoice from the Town for any reason shall not be deemed to satisfy or nullify the applicant's or the property owner's obligations under this chapter or the fee schedule.

D. Annexation and major developments. In the case of petitions for annexation and applications for zoning and other actions for major developments, as specified in the fee schedule, the following additional requirements shall apply:

(1) Administrative deposit. In addition to any application fee, the applicant will tender to the Town any required deposit at the time application. No interest shall be accrued to the applicant on any funds maintained by the Town.

(2) Stay of proceedings. The Town will periodically provide the applicant an accounting of the costs and expenses incurred by the Town and charged against the deposit. If at any time, the deposit balance falls below the minimum amount specified in the fee schedule, the Town will notify the applicant and the applicant shall immediately replenish the deposit to the required amount. If the deposit balance remains unreplenished below the required amount for more than five business days after notification from the Town, all processing of the application or proposed legislation may be stayed by the Town until such time as this condition is satisfied.

E. Outstanding balance. If an application is approved and there is an outstanding balance due to the Town for fees, charges or expenses associated with the application, the Town may withhold final action and/or the issuance of any permits or certificate until the obligation is satisfied.

F. Notice. The applicant and the owner(s) of the property subject to an application or request shall be given notice of the requirements of this chapter and the fee schedule prior to filing. Failure of the applicant and/or the owner(s) of the property subject to the application to receive such notice or to acknowledge receipt of the same shall in no way invalidate or diminish the enforceability of this chapter or the fee schedule.

G. When the applicant is not the property owner. For any application or request that applies to the use of land, or any improvements thereon, and may subsequently result in vested property rights, the applicant, if not the same as the property owner(s), shall be required to execute the

same application form executed by the property owner(s) or a separate acknowledgement form provided by the Town.

- H. Work product. Subject to any attorney-client privilege or other applicable disclosure limitation, the written results of any third party consultation for which fees are assessed to an applicant shall be available to the applicant and for public review. Such work product shall be deemed to have been made solely for the benefit of the Town and shall remain its property.

§ 42-06. Development agreements.

This chapter shall in no way limit the Town's authority to enter into individual contractual agreements with persons engaged in the subdivision or development of property, including but not limited to business entities, property owners and other third parties whose proposals are subject to the Town's review and approval, wherein certain fees, charges and conditions may be subject to negotiation.

§ 42-07. Fee waivers.

The fees and charges under this chapter applicable to any application filed by a unit or instrumentality of federal, State or local government may be waived upon the submittal of a request in writing to the Town Clerk/Manager.

§ 42-08. Refunds.

All petitions for refunds shall be made to the Town Clerk/Manager. Refunds of fees may be allowed in proportion to the status of the application and the time and resources expended by the Town in the processing of such application. In no case where the processing of an application or request has commenced shall more than fifty percent (50%) of the fee be refundable. Where applications are submitted which do not contain the required materials for review, an administrative charge of ten percent (10%) of the application fee will be assessed with the returned application.

§ 42-09. Billing disputes.

- A. Interpretation. In the event this chapter shall conflict with any other provision of this Code, this section shall control the resolution of any billing dispute arising from this chapter and/or the fee schedule.

- B. Appeal to Town Clerk/Manager.

(1) Any dispute regarding the interpretation or application of this chapter, or the amount required to be paid, either in advance or upon completion of review or as a deposit, may be submitted in writing to the Town Clerk/Manager within twenty-one (21) days from notice of the obligation.

(2) Applicants shall provide itemized written objections to any invoice or demand for payment from the Town within such twenty-one (21) day period. If an applicant fails to provide detailed written objections or explanation within that period, the Town may deduct any undisputed or unidentified itemized amounts of the balance due from any applicant funds held by the Town and may refer any outstanding balance to the Town Attorney to be pursued

as a debt collection matter or as a lien against the subject property that may be collected as municipal taxes are collected.

(3) The Town Clerk/Manager, after due notice and investigation, and for good cause shown, may affirm, modify, increase, reduce, or reverse the disputed charge.

C. Appeal of Town Clerk/Manager's Decision.

Decisions of the Town Clerk/Manager regarding billing disputes, collections, fee limitations, or interpretations of this chapter may be appealed by an aggrieved party to the Board of Zoning Appeals in the same manner, and pursuant to the same procedures, as appeals are taken from decisions of the Zoning Inspector to the Board of Zoning Appeals. A decision of the Board of Zoning Appeals in review of a decision of the Town Clerk/Manager involving fees or charges may be appealed to the Maryland Tax Court or the Circuit Court for Talbot County as provided by applicable law

§ 42-10. Unpaid fees; collection; interest.

A. All outstanding fees and charges shall be billed and collected by the Town Clerk/Manager. .

B. For applications pertaining to private property where the applicant is the owner of the subject property, any outstanding fees and charges owed pursuant to this chapter, including but not limited to interest, attorney fees and other collection costs, shall be considered a lien against the subject property and may be collected in the same manner as delinquent Town taxes or by civil suit or by any other legal remedy available to the Town.

C. For all applications not covered by paragraph B, any outstanding fees and charges pursuant to this chapter, including but not limited to interest, attorney fees and other collection costs, may be collected by civil suit or by any other legal remedy available to the Town.

D. Where an application involves multiple applicants, or an authorized representative(s) of an organization or an authorized agent of an applicant, the persons and the legal entity, where applicable, filing the application shall be jointly and severally liable for fees and charges pursuant to this chapter.

E. Any unpaid fee or charge shall be subject to interest while in arrears; said interest to be at the rate established by the Town Commissioners and specified in the fee schedule, provided that said rate does not exceed the maximum interest rate permissible under Maryland law.

SECTION 2. AND BE IT FURTHER ORDAINED AND ENACTED, that this ordinance and the various parts hereof are declared severable. If any part, sentence, section, or clause is adjudged to be invalid, it is hereby provided that the remainder of the ordinance shall not be affected and shall remain in full force and effect.


SECTION 3. AND BE IT FURTHER ORDAINED AND ENACTED, that all ordinances, resolutions or parts of ordinances and resolutions adopted prior to this ordinance inconsistent with the provisions of this ordinance are hereby repealed to the extent of their inconsistency.

SECTION 4. AND BE IT FURTHER ORDAINED AND ENACTED, that this Ordinance shall take effect twenty (20) days from the date of its enactment, having been read at two (2)

meetings of The Commissioners of St. Michaels and having been passed by a yea and nay vote of The Commissioners of St. Michaels.

HAVING BEEN INTRODUCED, read for the first time, and ordered posted for public review at a Public Meeting of The Commissioners of St. Michaels held on the 10<sup>th</sup> day of June, 2009, at 5:00 o'clock p.m., in the meeting room at the St. Michaels Free Library, 106 S. Fremont Street, St. Michaels, Maryland.

I HEREBY CERTIFY THAT A COPY OF THE ORDINANCE AS INTRODUCED WAS POSTED for public review in the lobby of the Town Office from 8:30 o'clock a.m. on the 11<sup>th</sup> day of June, 2009 to 8:30 o'clock a.m. on the 25<sup>th</sup> day of June, 2009.

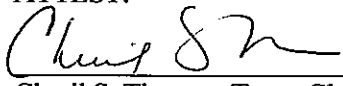
 (SEAL)  
CHERIL S. THOMAS  
Town Clerk\Manager

HAVING BEEN READ for the second time and passed by a yea and nay vote of The Commissioners of St. Michaels at a Public Meeting of The Commissioners of St. Michaels held on this 24<sup>th</sup> day of June, 2009, at 6:30 o'clock p.m., in the meeting room at the Town Office, St. Michaels, Maryland.

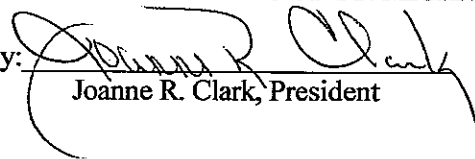
Brady	-	<u>yea</u>
Clark	-	<u>yea</u>
Dinkel	-	<u>yea</u>
Hunt	-	<u>yea</u>
Snyder	-	<u>absent</u>

I HEREBY CERTIFY that the above Ordinance No. 401 was passed by a yea and nay vote of The Commissioners of St. Michaels on the 24th day of 2009.

ATTEST:

 (Seal)  
Cheril S. Thomas, Town Clerk\Manager

THE COMMISSIONERS OF ST. MICHAELS

By:   
Joanne R. Clark, President

I HEREBY CERTIFY that an exact copy of this Ordinance, as adopted, was posted for public review from the 25th day of June, 2009, at 8:30 o'clock a.m. to the 15th day of July, 2009, at 8:30 o'clock a.m., in the lobby of the Town Office in St. Michaels, Maryland, and that a summary of the aforesaid Ordinance No. 401, the date of its passage, its effective date and the fact that the entire text of the Ordinance may be read in the lobby of the Town Office, St. Michaels, Maryland, for at least twenty (20) days following the passage, has been published at least once each week for two (2) consecutive

Adopted 06/24/09

weeks following the passage of said Ordinance in a newspaper having general circulation in the Town of St. Michaels.

Date: July 15, 2009

Cheryl S. Thomas (Seal)  
Cheryl S. Thomas, Town Clerk/Manager

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