



## Town of Mamaroneck

County of Westchester

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### MEMORANDUM

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To: Stephen V. Altieri, Town Administrator  
Christina Battalia, Town Clerk

From: William Maker, Jr., Attorney for the Town

Subject: Local law amending the sewer rent law

Date: November 16, 2018

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I attach a proposed local law which, if enacted, will amend the Town's sewer rent law. The amendment creates an exemption for water consumption that does not generate sewage for the Town's sanitary system. It also improves upon the definition of two terms used in the sewer rent law.

The first paragraph in the Local Law appearing after the title "**§174-1 Legislative Intent**" is part of the current law. What follows is new.

I also attach a copy of the current sewer rent law not only to provide context for the amendment but also to point out (in my handwriting) where the language improvements will be inserted if this law is passed

If the Town Board considers the proposal ready for a public hearing, it can set the date for such a hearing at one of its upcoming meetings.



## Local Law No. - 2018

This local law shall be known as the "Exemption from the Sewer Rent for Separately Metered Water that is not Discharged into the Sanitary Sewer System" Law.

BE IT ENACTED by the Town Board of the Town of Mamaroneck

### Section 1 – Purpose:

The sewer rent law is intended to levy charges for sanitary sewer service based upon a property's discharge of sewage into the sanitary sewer system. The sewer rent law calls owners of real property that discharge sewage into the sanitary sewer system "System Users". The owners of real property whose sewage is not discharged into the sanitary sewer system (e.g. properties served by septic system) are not "System Users" since the discharge therefrom does not enter the sanitary sewer system. Hence these owners are not subject to a sewer rent.

There are properties that do both. Certain consumers of water, such as golf courses, have facilities, such as clubhouses and locker rooms, that discharge sewage into the sanitary sewer system but also consume water that is not returned as sewage to the sanitary sewer system, such as water used to irrigate fairways or fill water hazards. This local law takes that distinction into consideration by establishing a dichotomy between facilities that do discharge sewage into the sanitary system and facilities that do not by imposing sewer rent upon the former and exempting the latter from sewer rent.

This local law also improves the definition of two of the terms used in the sewer rent law.

### Section 2 – Repeal and replacement of a current section of the Mamaroneck Code:

Section 174-1 of the Code of the Town of Mamaroneck hereby is repealed and the following substituted in its place:

#### **§174-1 Legislative Intent.**

The Town Board finds that it is in the public interest to raise funds to operate, maintain and repair the sanitary sewer system and, if deemed appropriate by the Town Board and not prohibited by General Municipal Law § 453(3), to expand such system through a sewer rent rather than by taxation because a sewer rent more equitably distributes the cost since it is a function of usage computed based upon water consumption and is charged to all the users of the sanitary sewer system, including tax-exempt properties.

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real property whose sewage is not discharged into the sanitary sewer system (e.g. properties served by septic systems) are not "System Users" since the discharge therefrom does not enter the sanitary sewer system. The owners of these properties are not subject to a sewer rent.

There are properties that do both. Certain consumers of water, such as golf courses, have facilities, such as clubhouses and locker rooms, that discharge sewage into the sanitary sewer system but also consume water that is not returned as sewage to the sanitary sewer system, such as water used to irrigate fairways or fill water hazards. This law takes that distinction into consideration by imposing sewer rent for the facilities that do discharge sewage into the sanitary system and exempting from sewer rent the facilities that do not discharge sewage into the sanitary system.

#### Section 3 – Amendment of a current section of the Mamaroneck Code:

Section 174-3 of the Code of the Town of Mamaroneck hereby is amended by adding the following new subsection F.

- F. If a system user has installed water meters that exclusively measure the volume of water being used for activities that do not result in sewage being discharged into the sanitary sewer system, the system user shall not be subject to sewer rent based upon the volume of water measured by such meters. To be eligible for this exemption, a system user must demonstrate to the satisfaction of the Town Engineer (or other designated town officer) that the water measured by such water meters is being used for activities that do not result in sewage being discharged into the sanitary sewer system. The exemption shall last for three years but can be renewed for additional three year periods if on or before the date on which the then current exemption expires, the sewer user demonstrates to the satisfaction of the Town Engineer (or other designated town official) that the water measured by such water meters is still being used for activities that do not result in sewage being discharged into the sanitary sewer system. The Town Engineer (or other designated town official) shall maintain a record of the date on which each exemption is granted or renewed. The failure of a system user that has been granted an exemption to renew that exemption prior to its expiration date shall subject that user to a sewer rent for the water consumed between the expiration date and the date upon which a renewal is granted even though had the exemption been renewed prior to its expiration date, the system user would not have been subject to a sewer rent for the consumption of such water. The failure of the Town Engineer (or other designated town official) to maintain a record of the date on which an exemption is granted or renewed shall not be a defense to the imposition of a sewer rent under the circumstances described in the preceding sentence.

#### Section 4 – Amendment of a current section of the Mamaroneck Code:

The definition of SEWER RENT in section 174-2 of the Code of the Town of Mamaroneck hereby is amended by adding the word "sewage" between the word "discharging" and the word "into".

The definition of SEWER USERS in section 174-2 of the Code of the Town of Mamaroneck hereby is amended by adding the word "sewage" between the word "discharge" and the word "into".

Section 5 – Severability:

Should any provision of this Local Law be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration of unconstitutionality or invalidity shall not affect any other provisions of this Local Law, which may be implemented without the invalid or unconstitutional provisions.

Section 6 – Effective Date:

This Local Law shall become effective upon filing with the Secretary of State.

November 17, 2018

## Chapter 174: Sewer Rents

[HISTORY: Adopted by the Town Board of the Town of Mamaroneck 12-3-2014 by L.L. No. 7-2014. Amendments noted where applicable.]

### GENERAL REFERENCES

Sewers — See Ch. 173.

Water — See Ch. 231.

### § 174-1 Legislative Intent.

The Town Board finds that it is in the public interest to raise funds to operate, maintain and repair the Town's sanitary sewer system and, if deemed appropriate by the Town Board and not prohibited by General Municipal Law § 453(3), to expand such system through a sewer rent rather than by taxation because a sewer rent more equitably distributes the cost since it is a function of usage computed based upon water consumption and is charged to all the users of the Town's sanitary sewer system, including tax-exempt properties.

### § 174-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated in this section:

#### REVENUE

The amount of money that the Town Board determines must be collected in a given fiscal year in order to operate, maintain and repair the sanitary sewer system and, if deemed appropriate by the Town Board and not prohibited by General Municipal Law § 453(3), to expand such system.

#### SANITARY SEWER SYSTEM

The conduits, drains, pipes, interceptors, laterals, mains, pumps, trunk lines and the other appurtenances or facilities owned, operated and maintained by the Town of Mamaroneck (whether located within or outside the Town's municipal boundaries) that are used to collect, treat and/or transport sewage.

#### SEWAGE

Water-carried human or animal wastes, and any other waste, whether or not it contains organic matter.

[Amended 1-21-2015 by L.L. No. 1-2015]

#### SEWER DISTRICT

The Town of Mamaroneck Consolidated Sewer District as it currently is constituted and as it may be expanded or contracted from time to time.

#### SEWER RENT

The charges established from time to time by the Town Board of the Town of Mamaroneck for discharging into the sanitary sewer system.

SEWAGE

#### SEWER RENT FUND

The fund into which the sewer rents are deposited.

#### SYSTEM USERS

The owners of real property, other than the Town of Mamaroneck, its authorities or the Larchmont-Mamaroneck Joint Garbage Disposal Commission, that discharge into the sanitary sewer system, whether such property is located within or outside the Town's municipal boundaries.

SEWAGE

#### WATER CONSUMPTION

The total volume of water delivered by water sources to a property owned by a system user.

**WATER SOURCE**

Any entity that delivers water to a property owned by a system user.

**WJWW**

The Westchester Joint Water Works.

**§ 174-3 Rates; billing; adjustments.**

- A. Annually, the Town Board, by resolution, shall set the rate per gallon or per cubic foot, as the case may be, of water consumption to be used in determining the sewer rent for the following fiscal year. That rate shall be calculated by dividing the revenue by the water consumption of all system users in the previous fiscal year. The resolution establishing and imposing the sewer rent shall be adopted only after a public hearing held upon five days' public notice or such other period as may be mandated by General Municipal Law § 452(2) or any statute that may replace it.
- B. A system user shall pay a sewer rent equal to the rate set pursuant to § 174-3A, multiplied by 90% of the system user's water consumption.
- C. Billing.
- (1) So long as WJWW is the billing agent for the sewer rent, the sewer rent due from system users whose water source is WJWW shall be the date on which those invoices sent to them by WJWW that contain a charge for the sewer rent are due and payable. For all other system users and if WJWW ceases to be the billing agent for the sewer rent, the sewer rent shall be due and payable on the first day of February, May, August and November of each year.
- (2) In the case of system users whose water source is WJWW, invoices for sewer rent shall be sent to the address to which WJWW sends its invoices for water usage. For all other system users and if WJWW ceases to be the billing agent for the sewer rent, invoices for sewer rent shall be sent to the same address that the Town sends bills for real estate taxes to such system users.
- (3) The failure to receive a bill for the sewer rent shall not be grounds for waiving penalties or interest imposed as the result of a late payment.
- D. Any system user who maintains that his/her/its sewer rent should be reduced for any given year may make one application to the Town Board for a reduction in that year's sewer rent. Such application must be in writing and be supported by evidence that proves either:  
[Amended 1-21-2015 by L.L. No. 1-2015]
- (1) That the system user's water consumption was less than the water consumption that was used to calculate the system's user's sewer rent for that year; or
- (2) That the amount of the system user's water consumption that actually was discharged into the sanitary sewer system was less than the amount of water consumption used to calculate the system user's sewer rent.
- E. If the Town Board reduces a sewer rent pursuant to § 174-3D(2), that system user's sewer rent shall be recalculated based upon the portion of that system user's water consumption that actually was discharged into the sanitary sewer system and not 90% of that system user's water consumption.  
[Added 1-21-2015 by L.L. No. 1-2015]

F.

**§ 174-4 Late payments; penalties; liens; enforcement.**

- A. A penalty of 1% of the amount shown as due for sewer rent on an invoice shall be charged for any payment of sewer rent that is made after the date on which it is due and payable. An additional penalty of 1% shall be added to the amount shown as due for sewer rent on an invoice for the sewer rent for each calendar month starting with the first calendar month after the date on which such invoice was due and payable.
- B. Sewer rents imposed upon real property owned by a sewer user shall constitute a lien upon that real property or such part or parts thereof for which sewer rents shall have been established and imposed. The lien shall be prior and superior to every other lien or claim except the lien of an existing tax, assessment or other lawful charge imposed by or for the state or a political subdivision or district thereof.
- C. The Town Board, acting on behalf of a sewer district may bring and maintain an action as upon contract for sewer rents in arrears, including penalties and interest, or to foreclose liens for such sewer rents. As an alternative to such action, the Town Board may cause a statement to be prepared annually setting forth the amount of the sewer rents in arrears, including penalties and interest, the real property affected thereby and the name of the person in whose name such real property is assessed. The Town Board shall levy the amounts contained in such statement against the real property liable at the same time and in the same manner as Town taxes, and such amounts shall be set forth in a separate column in the annual tax rolls. The amounts so levied shall be collected and enforced in the same manner and at the same time as may be provided by law for the collection and enforcement of Town taxes. The failure of the Town Board to follow the alternative enforcement mechanism described in the preceding sentence in any given year shall not preclude it from following that procedure in other years.

**§ 174-5 Use of sewer rent fund.**

- A. The sewer rents, including penalties and interest, shall be credited to a special fund, to be known as the "sewer rent fund."
- B. As mandated by General Municipal Law § 453, moneys in such fund shall be used in the following order:
  - (1) For the payment of the costs of operation, maintenance and repairs of the sanitary sewer system or such part or parts thereof for which sewer rents have been established and imposed.
  - (2) For the payment of the interest on and amortization of, or payment of, indebtedness which has been or shall be incurred for the construction of the sanitary sewer system or such part or parts thereof for which sewer rents have been established and imposed (other than indebtedness, and the interest thereon, which is to be paid in the first instance from assessments upon benefited real property).
  - (3) For the construction of sewage treatment and disposal works with necessary appurtenances including pumping stations or for the extension, enlargement, or replacement of, or additions to, the sanitary sewer system, or parts or parts thereof.
- C. As mandated by General Municipal Law § 453, sewer rents shall not be used to finance the cost of any extension of any part of the sanitary sewer system (other than any sewage treatment and disposal works with necessary appurtenances including pumping stations) to serve areas not currently served by sewers if such part has been constructed wholly or partly at the expense of real property especially benefited or for the payment of the interest on, and the amortization of, or payment of, indebtedness which is to be paid in the first instance from assessments upon benefited real property.

**§ 174-6 Initial sewer rent.**

Notwithstanding the effective date of the local law adding this chapter to the Code of the Town of Mamaroneck, the initial sewer rents shall be imposed starting on October 1, 2015.