



**Town of East Fishkill
Dutchess County, New York
330 Route 376
Hopewell Junction, New York 12533
Telephone 845-221-9191**

**TOWN BOARD
WORKSESSION
JULY 18, 2019 @ 7:00PM**

Pledge of Allegiance

Supervisor's Announcements

Open Work Session

Discussion:

1. Discuss Local Law for the Permissive Referendum to Establish a Capital Reserve Fund for Paving and Drainage Repair

Open Discussion

Close Work Session

Next Town Board Meeting: July 25, 2019

All Agendas are posted on the web www.eastfishkillny.org



NICHOLAS D'ALESSANDRO
TOWN SUPERVISOR

TOWN OF EAST FISHKILL
OFFICE OF THE TOWN ATTORNEY
330 ROUTE 376
HOPEWELL JUNCTION, NEW YORK 12533

THOMAS F. WOOD
TOWN ATTORNEY

TOWN BOARD
PETER CASSIDY
THOMAS FRANCO
EMANUELE MARINARO
ANIL BEEPHAN

MEMORANDUM

TO: Supervisor & Members of the Town Board

FROM: Thomas F. Wood, Town Attorney

RE: Local Law "H" Establishing a Capital Reserve Fund for Road Paving

DATE: July 12, 2019

Attached is the draft of the above Local Law for discussion on the 18th and Public Hearing on the 25th.

This Local Law must be submitted to the voters for approval pursuant to NYS Municipal Home Rule Law § 23(F). The proposed Local Law requires Town Supervisors and Town Boards of the future to appropriate a minimum of \$1.3 million dollars. This imposes a mandate on them thus requiring voter approval. Additionally, the elected Highway Superintendent's role would be advisory with respect to what roads get paved, again a change in the powers and duties of an elective officer requiring voter approval.

The Local Law requires the establishment of a Capital Reserve fund created under General Municipal Law Section 6-C. The creation of this fund would be subject to a permissive referendum.

When an action of the Town Board is subject to permissive referendum, state law sets forth a process as to what that entails. Briefly, once an action or resolution subject to permissive referendum is approved by the Town Board, certain additional steps are required before it is effective. Once adopted by the Town Board, a notice that the action was taken must be posted and published together with a notice that it is subject to permissive referendum. If within 30 days of its adoption a petition is submitted containing the signatures of at least 5% of the number of votes cast in the last election for Governor held in the Town, and if such a petition is received and is valid, a voter referendum must be held. If no petition is received, then the action of the Town Board is effective.

NYS Town Law Section 94 allows the Town Board, on actions subject to permissive referendum, to bypass the petition requirement and go right to a voter referendum.

In light of these provisions, this law must be voter approved before it can be effective.

LOCAL LAW “H” OF 2019
(ESTABLISHING ROAD PAVING RESERVE FUND)

SECTION ONE: LEGISLATIVE INTENT

Town Government provides the most important basic services needed for a community to thrive. Aside from providing police services and in some cases water and sewer, recreation, judicial, etc., the biggest challenge for local government is the upkeep and maintenance of town roads. The Town of East Fishkill has over 219 centerline miles of town roads, the largest amount of local roads owned by any town in Dutchess County. New York State and Dutchess County own the state and county roads.

The town owned roads are as small as shared driveways up to and including major collector roads such as Lake Walton Road, Leetown Road, W Hook Road, etc. Currently and over the last decades the town highway budget has contained a range of budget appropriations for road paving from \$200,000.00 to some years when funds were borrowed for upwards of one (1) million dollars. It is clear that despite best efforts and by keeping under the tax cap, an appropriate and consistent amount of funding for road paving has not been achieved.

It is the intent of this Local Law to establish a capital reserve fund of 1.3 million dollar which shall be the annual minimum appropriation with additional funds added from the operating budget as appropriated by the Town Board. This law, if approved by the voters would mandate this minimum annual appropriation establish a road selection system to determine what roads get paved each year, and to require the Town Board to approve the road list. To establish this fund the tax cap would be exceeded in the initial year of funding.

It is the intent of the Town Board that the appropriation from the Highway fund be maintained at its traditional level and never less than the amount of the CHIPS funding received from NYS which is approximately \$350,000.00.

It is with all of these issues in mind that the Town Board adopts this Local Law.

SECTION TWO: CAPITAL RESERVE FUND

There is hereby established a Capital Reserve Fund to be solely used for town road paving and drainage repair beneath and appurtenant to the road.

SECTION THREE: MINIMAL APPROPRIATION

The Town Board must annually appropriate a minimum of 1.3 million dollars into the road paving capital reserve fund.

SECTION FOUR: ROAD RATINGS

Using the 2017 Cornell Local Roads Program, County of Dutchess Report as a basis, the conditions of all town roads will be rated and ranked in accordance with the standards and criteria set forth within the Cornell Report.

SECTION FIVE: ROAD SELECTION

Annually, by April 15th of each year, the Town Engineer will submit to the Town Board an updated road rating list as required by Section Four. Additionally, the Town Engineer will provide a list of the roads to be paved in the calendar year with a cost estimate limited by the Road Paving Capital Reserve Fund balance.

SECTION SIX: COMMENTS OF HIGHWAY SUPERINTENDENT

Prior to submitting the road selection list to the Town Board by April 15th, the Town Engineer will provide a copy of said list to the Highway Superintendent 20 days before to allow for the Superintendent to make comments on the list. Should the Highway Superintendent make no comment, the list will be considered by the Town Board as submitted by the Town Engineer.

SECTION SEVEN: ADOPTION OF ANNUAL ROAD PAVING PROGRAM LIST

The Town Board will by May 31st of each calendar year approve a paving list and direct that bids be received for the paving of the roads on the approved list. Upon the receipt of bids the Town Board will award the bid in accordance with the requirements of the General Municipal Law.

SECTION EIGHT: SUPERCESSION

In accordance with the Municipal Home Rule Law this law, when approved by the voters, limits the powers of the Town Board by requiring a minimum appropriation to the Road Paving Capital Reserve Fund and revises the roll of the Town Highway Superintendent with respect to

road maintenance and thus contains the powers and duties conferred under the Town Law §20 and Highway Law §140.

SECTION NINE: ONE TIME TAX CAP EXCEEDANCE

Upon approval by the voters and effective date of this Local Law, the Town Board may exceed the NYS Tax Cap mandate for the first year implementation, 2019. The exceedance would only be for the amount needed to fund the 1.3 million minimum. All years thereafter the budget shall remain within the tax cap unless otherwise authorized.

SECTION TEN: SUBMISSION TO VOTERS

Since this law modifies and limits the powers and duties of elected officials, voter approval is required. This Local Law will be submitted to the electors of East Fishkill at the General Election to be held on November 5, 2019.

The question presented shall be:

“Shall Local Law “H” of 2019 Establishing a Road Paving Capital Reserve fund with a minimum of 1.3 million dollars annually and establishing a road paving selection program and authorizing the exceedance of the tax cap in “2019” be approved?”

SECTION ELEVEN: SEVERABILITY

Should any section or provision of this Local Law be declared or determined to be unenforceable, it will not affect the remaining provisions.

SECTION TWELVE: EFFECTIVE DATE

This Local Law shall take effect after approval by the voters on November 5, 2019 and its filing with the Secretary of State of the State of New York.

**BY ORDER OF THE TOWN BOARD
OF THE TOWN OF EAST FISHKILL
CAROL HURRAY, TOWN CLERK**

Adopted on the _____ day of _____, 2019.