

PROFESSIONAL CONSULTATION FEES

LOCAL LAW NO. 10 OF THE YEAR 1995

**A Local Law Providing for Reimbursement of
Professional Consultation Fees**

Adopted November 8, 1995

Be it enacted by the Town Board of the Town of Kirkwood as follows:

Section 1. Professional Fees:

(Latest Amendment: 12-27-11 by LL #10-2011)

A. The Kirkwood Town Board, the Town of Kirkwood Planning Board, the Town of Kirkwood Zoning Board of Appeals, the Commissioner of Public Works, or the Code Enforcement Officer of the Town of Kirkwood, in the review of any pending application, may refer such application presented to it to such engineering, planning, legal, technical or environmental consultant, or professional(s) employed by the Town, as shall be deemed reasonably necessary to enable it to review such application as required by law, including attendance by the Town Engineer or Town Attorney at any regular or special public meetings of the Town Board, Planning Board or Zoning Board of Appeals. (Latest Amendment: Dec. 27, 2011 by LL #10-2011)

B. The applicant shall reimburse the Town for the cost of such consultant services.

C. Charges made by such consultants shall be in accord with charges usually made for such services in the Broome County, New York region or pursuant to an existing contractual agreement between the Town and such consultant. Charges made by the Town shall be in accord with the hourly rates upon which the employee's actual salary is based and fringe benefits and reasonable overhead. (Latest amendment: Dec. 27, 2011 by LL #10-2011)

D. At such time as the application is approved or denied by the Board(s) having jurisdiction, the Town Clerk shall refund to the applicant the amount deposited pursuant to Section 2 less the following percentages of any sums expended by the Town to engage services of attorneys, engineers, and other qualified professionals to provide assistance to town boards and officials relating to said project (hereinafter the "Professional Review Fees"), together with copies of any voucher for services provided by such attorneys, engineers or other qualified professionals:

1. When the application is approved by the Board(s) having jurisdiction: 100% of said Professional Review Fees.

2. When the application is denied by the Board(s) having jurisdiction - 50% of said Professional Review Fees.

A copy of the computation of said sums so expended shall be provided to the applicant at the time that the Town Clerk shall calculate the refund, if any, due applicant hereunder. (Latest Amendment: Dec. 27, 2011 by LL #10-2011)

E. In the event that an application is required to be reviewed by more than one Board, then, in such event and to the extent practicable, both Boards shall use the same consultant, who shall, in such case, to the extent practicable, prepare one (1) report providing data, information and recommendations requested. In all instances, duplications of consultants' reports or services shall sought to be avoided wherever practicable in order to minimize the cost of such consultants' reports or services

to the applicant. The above fees are in addition to any and all other fees required by any other law, rule or regulation.

Section 2. Escrow Accounts

(Latest Amendment: Dec. 27, 2011 by LL #10-2011)

A. At the time of submission of any application, or thereafter, an escrow account shall be established, from which withdrawals shall be made to reimburse the Town for the costs of professional review services. The applicant shall then provide funds to the Town for deposit into such account in an amount to be determined by the reviewing Board with the advice and recommendation of the Town Engineer and Building Inspector based on its evaluation of the nature and complexity of the application, using the following schedule as a general guideline with the decision of the reviewing Board to be final and conclusive on the applicant:

1. For one and two-family residential projects no fee shall be charged and therefore no escrow deposit shall be required.

2. For three or more family residential projects with project value in excess of \$150,000.00, the total project value shall be calculated on the actual purchase price of the land or the fair market value of the land (determined by assessed value divided by equalization rate), whichever is higher, plus the cost of all required site improvements, not including the cost of buildings and structures as determined with reference to a current cost data publication in common use. In the case of such projects, the escrow deposit shall be one percent of the total project value.

3. For commercial and industrial construction projects with project value in excess of \$150,000.00, the total project cost shall be calculated on the actual purchase price of the land or the fair market value of the land (determined by assessed value divided by equalization rate), whichever is higher, plus the cost of supplying utility service to the project, the cost of site preparation and the cost of labor and material as determined with reference to a current cost data publication in common use. In the case of such projects the escrow deposit shall be one-fourth of one percent of the total project value.

4. For projects involving the extraction of minerals with project value in excess of \$150,000.00, the total project value shall be calculated on the cost of site preparation for mining. Site preparation cost means cost of clearing and grubbing and removal of over-burden for the entire area to be mined plus the cost of utility services and construction of access roads. Such costs are determined with reference to a current cost data publication in common use. The escrow deposit shall be one percent of the total project value. For those costs to be incurred for phases occurring three or more years after issuance of a permit, the value of project value shall be determined using a present value calculation.

B. Deleted 12-27-11.

C. The professionals employed by the Town shall report monthly to the Town Clerk as to the monetary value of their services rendered on each project.

D. When the balance in such escrow account is reduced to one-third (1/3) of its initial amount, the Town Clerk shall advise the applicant and 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 thirty (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. An application shall be deemed incomplete if any amount shall be outstanding.

E. A building permit or other permit being sought shall not be issued unless all professional review fees charged in connection with the applicant's project have been reimbursed to the Town from said escrow account.

F. All fees required pursuant to this local law shall be collected by the Town Clerk.

G. This local law shall be applicable to applications pending at the time it shall become effective, unless the reviewing Board shall determine that its application would be impracticable, unfair or unjust in the particular circumstances. Where this local law shall be applicable to a pending application, it shall, in such event, require an applicant only to pay for professional fees for the services rendered after it shall have become effective.

Section 3. Separability Clause

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances and the Town Board of the Town of Kirkwood hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 4. Repeal

All Ordinances, Local Laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section 5. Effective Date

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