

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 professional consultant services reasonably necessary to enable it to review such application. In no event shall applicant's responsibility be greater than the actual cost to the Town of such professional consultant services. (Latest Amendment: June 30, 2020 by LL #2-2020)

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)

PROFESSIONAL CONSULTATION FEES

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

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

(Amendment: June 30, 2020 by LL #2-2020)

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 consultants' services. For one and two-family residential projects, no fee shall be charged and therefore no escrow deposit shall be required. Upon establishment of an escrow account, 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:
(Latest Amendment: June 30, 2020 by LL #2-2020)

1. The costs of professional consultant services in connection with comparable applications in the Broome County, New York region; and

2. The nature and complexity of the application with the decision of the reviewing Board to be final and conclusive on the applicant.

B. Expenditures from the escrow account shall be made by the Town as follows:
(Latest Amendment: June 30, 2020 by LL #2-2020)

1. The professional consultants employed by the Town shall provide an itemized voucher to the Town Clerk as to the monetary value of their services rendered on each project.

2. The Town Board shall review and audit all vouchers and shall determine whether such professional consultant expenses are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of applications.

3. Upon receipt of a request by the applicant, the Town shall supply copies of such vouchers to the applicant reasonably in advance of audit and approval, appropriately redacted where necessary to shield legally privileged communications between Town officers or employees and the Town's professional consultants.

4. In the event of request, the applicant shall be entitled to be heard by the Town Board on reasonable advance notice regarding expenditures from the escrow account.

5. After audit and approval of such vouchers by the Town Board, the Town may make payments from the escrow account.

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. The applicant shall reimburse the Town for the cost of professional services in excess of the amount in escrow prior to final decision on the applicant's project, only if the Town Board

PROFESSIONAL CONSULTATION FEES

determines that such professional consultant services are reasonable and necessary for the review of the application and the total costs for professional consultant services are reasonably similar to such costs for comparable applications in the Broome County, New York region. (Latest Amendment: June 30, 2020 by LL #2-2020)

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.