

**LOCAL LAW # 3 OF 2012 OF THE VILLAGE OF AURORA REGARDING
REIMBURSEMENT OF PROFESSIONAL CONSULTATION FEES**

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE INCORPORATED VILLAGE
OF VILLAGE OF AURORA, COUNTY OF CAYUGA, AS FOLLOWS:

Section 1. Enactment

Pursuant to Section 10 of the Home Rule Law, the Village Law and the Village Code of the Incorporated Village of Aurora, County of Cayuga, State of New York, hereby enacts by this Local Law # of 2012, a Local Law of the Incorporated Village of Aurora.

Section 2. Legislative Intent

It is the purpose and intent of this local law to promote and protect the health, safety and welfare of the residents of and visitors to the Village of Aurora; to preserve, protect and enhance the environment and aesthetic assets of the Village of Aurora, including the environmentally sensitive areas within the boundaries of the Village; and to safeguard the value of public and private property with the Village of Aurora by authorizing the Village of Aurora to provide for a system whereby applicants, appellants and other parties seeking the assistance or review of the Village Board of Trustees, Village Planning Board and/or Village Zoning Board of Appeals fully reimburse the Village of Aurora for professional consultation fees in connection with such matters.

Section 3. Background & Policy

The Village of Aurora Board of Trustees, Planning Board and Zoning Board of Appeals are legally required to review applications, appeals and requests for assistance from time to time on various matters or concerns which may be presented to any or each of the boards. In furtherance of performing their duties in addressing such matters it becomes necessary to refer certain matters to professional consultants for review, study, assistance and direction. Being cognizant that many matters submitted to the Village of Aurora's various boards do not benefit the citizens of Aurora as a whole and often benefit a single party, or a very limited class of citizens, the Village Board of Trustees has determined it is just and equitable for applicants, appellants and other parties seeking the assistance of the municipal boards to reimburse the Village of Aurora for costs incurred relating to matters reviewed by its boards.

Section 4. Professional & Consulting Fees

A. The Village of Aurora Village Board, the Village Planning Board or the Village Zoning Board of Appeals, in the review of any application, appeal or other matter of concern pending before said Board, may refer such application, appeal or matter presented to it to such engineering, planning, legal, technical or environmental consultant, or professional(s) employed by the Village of Aurora, as such Board shall deem reasonably necessary to enable it to competently review same as required by law.

B. The applicant, appellant or other party shall reimburse the Village of Aurora for the cost of such consultant or professional services.

C. Charges made by such consultants shall be in accord with charges usually made for such services in the Cayuga County, New York region or pursuant to an existing contractual agreement between the Village and such consultant. Charges incurred by the Village through the use of Village employees' services shall be billed in accord with the hourly rates upon which the employee's actual salary is based plus fringe benefits and reasonable overhead costs.

D. At such time as the application, appeal or other matter to be reviewed is approved, denied or completed by the Board having jurisdiction, the Village Clerk shall refund to the applicant the escrow deposit required pursuant to Section 2 below, less any sums expended by the Village to engage services of attorneys, engineers, and other qualified professionals to provide assistance to said Board relating to said project and excluding those services referred to in subparagraphs (1), (2), and (3) of paragraph C of this section. A copy of the computation of said sums so expended shall be provided to the applicant at the time that the Village Clerk shall calculate the refund, if any, due the applicant hereunder.

E. In the event that an application, appeal or other matter 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 be 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 5. Escrow Accounts

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 Village for the costs of professional review services. The applicant shall then provide funds to the Village for deposit into such account in an amount to be determined by the reviewing board with the advice and recommendation of the Village Engineer, Building Inspector, consulting attorney or other appropriate Village of Aurora party based on their 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. The following amounts were derived from fees established by SEQR regulations:

- i. For residential projects consisting of up to two (2) single family homes, no fee shall be charged and therefore no escrow deposit shall be required;
- ii. For residential projects consisting of three (3) single family homes or greater, or a multi-family project, including apartments, condominiums, townhomes, duplexes and other similar properties, the

total project value shall be calculated based 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 two (2) percent of the total project value;

- iii. For commercial and industrial construction projects, 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-half (1/2) of one percent of the total project value.
 - iv. For projects involving the extraction of minerals, the total project value shall be calculated on the cost of site preparation for mining. Site preparation cost means the 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 two (2) 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 project value shall be determined using a present value calculation.
- b. The applicant shall be provided with copies of any voucher for such services as they are submitted to the Village.
 - c. The professionals employed by the Village shall report monthly to the Village Clerk 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 Village 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 Village from said escrow account.

- f. All fees required pursuant to this Local Law shall be collected by the Village Clerk.
- g. This Local Law shall be applicable to applications or appeals 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. Where this Local Law shall be applicable to an appeal, the board responsible for the review of same may waive the requirement for an escrow account and may establish reasoned reimbursement criteria in light of the nature, complexity and time expenditures of consultants inherent in undertaking a complete and proper review of the appeal.

Section 6. Severability

If a court determines that any clause, sentence, paragraph, subdivision, or part of this local law or the application thereof to any person, firm or corporation, or circumstance is invalid or unconstitutional, the court's order or judgment shall not affect, impair, or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 7. Effective date

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