

APPENDIX F

Draft Fencing Ordinance

**VILLAGE OF CAYUGA HEIGHTS**  
**PROPOSED LOCAL LAW "A" OF THE YEAR 2011**

**A LOCAL LAW AMENDING SECTION 9, "FENCES AND WALLS," OF THE  
VILLAGE OF CAYUGA HEIGHTS ZONING ORDINANCE**

Be it enacted by the Board of Trustees of the Village of Cayuga Heights as follows:

**SECTION I. PURPOSE AND INTENT.**

The purpose of this Local Law is to amend Section 9, "Fences and Walls," of the Village of Cayuga Heights Zoning Ordinance to provide a definition of fences and walls and to permit the erection, under the stated conditions, of taller fences than had previously been permitted within the Village of Cayuga Heights (the "Village"). The intent of this Local Law is to provide Village residents greater flexibility in their decisions concerning the height of fences, landscaping and design, and, specifically to protect the health, safety, and welfare of Village residents and their property from injury and damage due to deer population growth within the Village.

**SECTION II. AUTHORITY.**

This Local Law is enacted pursuant to the grant of powers to local governments provided for in (i) Section 10 of the Municipal Home Rule Law to adopt and amend local laws not inconsistent with the provisions of the New York State Constitution or not inconsistent with any general law relating to its property, affairs, government or other subjects provided for in said Section 10 of the Municipal Home Rule Law, (ii) Section 10 of the Statute of Local Governments and (iii) Section 7-700 of the Village Law.

**SECTION III. AMENDMENT OF ZONING ORDINANCE.**

As of the effective date of this Local Law, the text of Section 9, "Fences and Walls," of the Village's Zoning Ordinance is deleted in its entirety and replaced by the following:

**A. DEFINITIONS.**

For the purposes of this Zoning Ordinance, the following terms will have meanings set forth below:

**Fence or Wall** - Any structure of any material or combination of materials, including a gate that is part of the structure, that is designed to enclose land, divide land, mark a boundary, create a barrier, limit access to or direct passage across land, provide screening, protect against a potential hazard, or serve a decorative purpose. A freestanding arch or arbor shall not be considered a fence or wall even if it otherwise satisfies the foregoing definition unless it is attached to a fence or wall, in which case it will be considered a part of that fence or wall. In no case will living plants, such as hedges, shrubs, bushes or trees, or earthen berms of not more than four (4) feet in height, be deemed or considered to be fences or walls

under this Ordinance, regardless of how these may be arranged or located, and regardless of whether these may serve the same or a similar purpose as a fence or wall. Terraces, steps and other similar improvements will not be deemed to be fences. Earthen berms that exceed four (4) feet in height above the natural grade will be deemed to be fences under the provisions of this Ordinance. The words “fence” and “wall” are used interchangeably in this Ordinance.

**Height (of fences and walls)** - The distance measured from the natural grade, or lowest point of a fence, whichever is lowest, to the highest point of any component part of the fence. “Natural grade” is the grade unaffected by construction techniques such as fill, landscaping, or berming. Examples of how measurements are taken may be obtained from the Village Engineer’s Office.

**Exclosure Fences** - A fence that is designed and used to prevent animals from obtaining access to individual plantings or small groups of plants, flowers, gardens, lawn areas, shrubs, bushes or trees in order to assist with or promote their preservation, health or growth, and that exceeds four (4) feet in height but does not exceed eight (8) feet in height.

**B. PERMIT REQUIRED.**

A zoning permit shall be required for all fences. Prior to the erection or construction of any fence, the property owner must obtain a zoning permit signed by the Code Enforcement Officer of the Village of Cayuga Heights permitting the fence in the location(s) stated on the permit. In the event that any applicant for a zoning permit for a fence is denied such permit on the basis that the proposed fence does not comply with the terms and provisions of this Section 9, the applicant for the zoning permit shall have the right to appeal the Code Enforcement Officer’s denial and request from the Village’s Zoning Board of Appeals an area variance for the proposed fence. Any fence in existence as of the effective date of this Local Law may remain in existence, in its present location, provided that it satisfies the requirements of this Section 9, even if no permit for such fence had been issued.

**C. FENCES UP TO FOUR (4) FEET IN HEIGHT.**

A fence up to four (4) feet in height, and any exclosure fence that satisfies the conditions stated in subsection (D)(ii) below, may be erected or constructed at any location on any parcel of property.

**D. FENCES EXCEEDING FOUR (4) FEET IN HEIGHT.**

A fence that exceeds four (4) feet in height may be erected or constructed either

- (i) provided that it satisfies the height limitations of Section 5 above and the yard set-back limitations of Section 6 above,

or

(ii) in such locations and with such conditions as stated in subsections (a), (b), and (c) below:

a. Requirements for construction:

Any portion of a fence that exceeds four (4) feet in height and that is located between a side or rear property line and the required side yard or rear yard set-back, as well as any enclosure fence that is erected at any location on the property, must be constructed so that (1) any portion of such fence that is more than four (4) feet in height, when viewed from a position that is at a right angle to the face of the fence, is at least 90% open, and (2) all of the structure and materials of such fence are the same color, with colors limited to black, brown, gray or green, with a non-florescent finish. Notwithstanding the foregoing, chain link fencing will not be permitted for the portion of a fence over four (4) feet in height, even if such fence material otherwise satisfies requirements (1) and (2).

b. Side Yards and Rear Yards:

A fence of not more than eight (8) feet in height, including enclosure fences, shall be permitted along a side or rear property line and between a side or rear property line and the required side yard or rear yard set-back, as defined in Section 6 above, and must satisfy the conditions stated in subsection (a) above.

c. Front Yards:

Enclosure fences that satisfy the conditions stated in subsection (a) above shall be permitted on a front property line and between a front property line and the front yard set-back provided that the total area enclosed by all enclosure fences located between the front property line and the front yard set-back does not exceed one hundred and forty-four (144) square feet of property, and provided that no side of any enclosure fence exceeds twelve (12) feet in length, or, in the case of an oval or rounded enclosure fence, no diameter exceeds twelve (12) feet in length. Provided that these conditions are satisfied, there is no limit on the number of enclosure fences that may be erected or constructed on a single parcel of property.

E. **FENCES EXCEEDING EIGHT (8) FEET IN HEIGHT.**

No fence exceeding eight (8) feet in height may be erected or constructed at any location on any parcel of property, unless it satisfies the height limitations of Section 5 above and the yard set-back limitations of Section 6 above.

F. **SWIMMING POOL FENCES.**

Swimming pools are required to be enclosed by fences in accordance with the applicable provisions of New York State law.

SECTION IV. **SUPERSEDING EFFECT.**

All Local Laws, resolutions, rules, regulations and other enactments of the Village of Cayuga Heights in conflict with the provisions of this Local Law are hereby superseded to the extent necessary to give this Local Law full force and effect.

SECTION V. **VALIDITY.**

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION VI. **EFFECTIVE DATE.**

This Local Law shall be effective as of the date of filing with the New York Secretary of State, except that it shall be effective from the date of service as against a person served with a copy thereof, certified by the Village Clerk, and showing the date of its passage and entry in the Minutes of the Village Board of Trustees.