



Legislation Details (With Text)

File #:	19-0195	Version:	1	Name:	Ordinance-Professional Review Fees, Escrows and Procedures
Type:	Ordinance	Status:		Status:	Adopted
File created:	1/30/2019	In control:		In control:	Economic and Housing Development
On agenda:	3/20/2019	Final action:		Final action:	4/3/2019
Title:	ORDINANCE AMENDING THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, BY AMENDING THE ZONING CODE OF THE CITY OF NEWARK, TITLE XLI, TO INCLUDE A NEW SECTION UNDER SECTION 15 ENTITLED "SECTION 12.3: PROFESSIONAL REVIEW FEES, ESCROWS, AND PROCEDURES" TO ESTABLISH PROFESSIONAL REVIEW FEES AND ESCROW DEPOSITS FOR THE REVIEW AND ADMINISTRATION OF REVELOPMENT APPLICATIONS MADE TO THE CITY OF NEWARK'S CENTRAL PLANNING BOARD, BOARD OF ADJUSTMENT AND/OR LANDMARKS AND HISTORIC PRESERVATION COMMISSION.				
Sponsors:	Council of the Whole				
Indexes:					
Code sections:					

Date	Ver.	Action By	Action	Result
4/3/2019	1	Municipal Council	Close on Public Hearing and Adopt	Pass
3/20/2019	1	Municipal Council	Advance and Adopt on First Reading as 6F-	Pass

ORDINANCE AMENDING THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, BY AMENDING THE ZONING CODE OF THE CITY OF NEWARK, TITLE XLI, TO INCLUDE A NEW SECTION UNDER SECTION 15 ENTITLED "SECTION 12.3: PROFESSIONAL REVIEW FEES, ESCROWS, AND PROCEDURES" TO ESTABLISH PROFESSIONAL REVIEW FEES AND ESCROW DEPOSITS FOR THE REVIEW AND ADMINISTRATION OF REVELOPMENT APPLICATIONS MADE TO THE CITY OF NEWARK'S CENTRAL PLANNING BOARD, BOARD OF ADJUSTMENT AND/OR LANDMARKS AND HISTORIC PRESERVATION COMMISSION.

WHEREAS, the Zoning and Land Use Regulations were recently amended to enhance planning, housing, and economic development within the City of Newark; and

WHEREAS, the Zoning and Land Use Regulations, Title 41, Section 15-12.2, provides for the assessment of application fees for applications to the Newark Central Planning Board, Newark Zoning Board of Adjustment and the Newark Landmarks and Historic Preservation Commission (the "Boards") for the purposes of offsetting the administrative and clerical costs of running those Boards; and

WHEREAS, N.J.S.A. 40:55D-53.2 allows a municipality to charge the developer for professional services in reviewing the developer's application for development; and

WHEREAS, the Department of Economic and Housing Development determined that

implementation of N.J.S.A. 40:55D-53.2(b) would result in a cost savings to the City for professional services provided by the City for the Central Planning Board, the Board of Adjustment, and the Landmarks and Historic Preservation Commission; and

WHEREAS, the Department of Economic and Housing Development proposed an amendment to the Site Plan Procedures to include a new section 12.3 to Chapter 15 of the Zoning and Land Use Regulations (Title XLI) entitled "Professional Review Fees, Escrows, and Procedures."

WHEREAS, the Municipal Council, pursuant to N.J.S.A. 40:55D-64, sought the recommendations of the Newark Central Planning Board relative to these issues; and

WHEREAS, the Central Planning Board, at its January 28, 2019 regular meeting, confirmed that the proposed amendment is substantially consistent with the City's Master Plan as well as its goals and objectives related to sustainable economic development, in accordance with the provisions of N.J.S.A. 40:55D-62.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY THAT:

Note: Additions are shown in **Bold and Underlined**.

1. Title XLI of the Municipal Code of the City of Newark entitled "Zoning and Land Use Regulations" is hereby amended to include a new Section 12.3 under Chapter 15 of Title XLI to establish escrow deposit fees to cover the cost of professionals hired by the City to review and analyze land use applications, to read as follows:

41:15-12.3 Professional Review Fees, Escrows and Procedures

- A. **As used herein, the following definitions apply to this Section:**
- i. **"Board" refers to the Central Planning Board, Board of Adjustment and/or Landmarks and Historic Preservation Commission.**
 - ii. **"Application" refers to the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant to N.J.S.A. 40:55D-1 et seq.**
 - iii. **"Professional Personnel" or "Professional Services," as used herein, shall include the services of a duly licensed engineer, surveyor, planner, attorney, realtor, inspector, appraiser or other expert who would provide professional services to ensure an application complies with the standards set forth in this chapter and any other expert who provides testimony on a subject matter testified to by any of the applicant's experts.**
 - iv. **All the terms defined within Title XLI, Chapter 2, "Definitions," and Title XLI, Chapter 15 "Site Plan Procedures," are incorporated herein.**
- B. **In addition to the application fees set forth in Section 41:15-12.2, escrow deposit fees are hereby established, as provided by N.J.S.A. 40:55D-53.2, to cover or offset the overhead for professional review services and/or outside consultants to the Boards including, but not limited to, planning, legal, engineering, landscaping, traffic, environmental and other professional expenses incurred by the City in connection with the review of submitted materials for land development**

applications.

- C. The City, through its Boards, shall require fees for professional review services and for testimony provided to the respective Board in reviewing an application. Fees for these services shall be in addition to any other required fees to be paid by a developer. Each developer, upon submission of an application to the Boards, shall provide a Federal Tax Identification Number or Federal Social Security Number.
- D. The review services of staff professionals shall be charged at 200 percent of the sum of the products by multiplying the hourly base salary, as established by ordinance for each professional, times the number of hours spent by the respective professional on review of the application for development or inspection of the developer's improvements, as permitted by N.J.S.A. 40:55D-53.2. Outside consultant professional review services shall be charged to the escrow account at the consultant's standard hourly rate.
- E. The applicant review and inspection charges shall be limited only to:
 - i. Professional charges for review of applications;
 - ii. An applicant shall be responsible for reimbursing the City, without limitation, for the following professional expenses:
 - a) All expenses of professional personnel incurred and paid by the City necessary to process an application for development before the Boards, including, without limitation:
 - a) Charges for reviews by professional personnel of applications and accompanying documents;
 - b) Issuance of reports by professional personnel to the Board setting forth recommendations resulting from the review of any documents submitted by the applicant;
 - c) Charges for any telephone conference or meeting with the applicant, his attorney or experts;
 - d) Review of documents submitted by the applicant and issuance of reports relating thereto;
 - e) Review and/or preparation of documents, including but not limited to, easements, developers' agreements, deeds, resolutions of approval or the like; and
 - f) Preparation for and attendance at hearings on the application.
 - ii. Review and preparation of documents;
 - iii. Inspections of developments under construction; and
 - iv. Review by outside consultants, when the application is outside the scope of the expertise of the professionals normally used by the municipality.
 - i. The costs of expert advice and/or testimony obtained by the Boards in connection with its consideration of the application.
- F. Upon submission of appropriate vouchers or statements, the Director of Finance of the municipality, or his/her designee, shall make all of the payments of expenses/fees to professionals for services rendered to the municipality or approving authority for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions of N.J.S.A. 40:55D-1 et seq., and shall keep a record of same for the purpose of monitoring and maintaining escrow deposits.
- G. Escrows

- i. Subject to the provisions of subsection 'H' below, "Conditions and requirements," each applicant shall, prior to the application being ruled complete pursuant to the provisions of the Municipal Land Use Law, submit the following sum(s) to be held in escrow in accordance with the provisions hereof:

- a) Residential Development (Planning Board application for site plan approval, Zoning Board of Adjustment application for "c" or "d" variance /site plan approval)

Number of Units	Escrow Amount to be Posted
0 to 3	\$2,000
4 to 10	\$3,000
11 to 25	\$4,500
26 to 50	\$5,500
51 to 100	\$8,000
100 or more	\$10,000

- b) Commercial development applications involving structures (including mixed use buildings) for site plan approval and /or "c" or "d" variance approval.

Gross Floor Area (GFA)Escrow Amount to be Posted	
0 to 1,000	\$500
1,001 to 5,000	\$2,000
5,001 to 10,000	\$4,500
10,001 to 15,000	\$7,000
15,001 to 20,000	\$9,000
20,001 to 25,000	\$10,000
25,001 to 30,000	\$12,500
30,001 to 100,000	\$15,000
Over 100,001	\$20,000

- c) Industrial & others development applications involving structures for site plan approval and/or "c" or "d" variance approval.

Gross Floor Area (GFA)Escrow Amount to be Posted	
0 to 1,000	\$1,000
1,001 to 5,000	\$2,500
5,001 to 10,000	\$5,000
10,001 to 15,000	\$8,000
15,001 to 20,000	\$9,500

20,001 to 25,000	\$13,000
25,001 to 30,000	\$15,000
30,001 to 100,000	\$17,000
Over 100,001	\$25,000

d) Subdivisions (Fees in addition to applicable site plan fee in subsections a or b above)

Minor Subdivision - \$200
Major Subdivision - \$1,000

- ii. Escrow fees shall be deposited and disbursed pursuant to the provisions of N.J.S.A. 40:55D-53.1. Escrow accounts shall be replenished by the applicant as required by N.J.S.A. 40:55D-53.2(c). Charges to the escrow account shall be made in accordance with N.J.S.A. 40:55D-53.2(c).
- iii. If the approving agency is requested to have a special meeting by the applicant and decides to do so, the applicant shall have professional fees deducted from the escrow account per this section. Professionals attending meetings may bill at the rate of four hours minimum which may be distributed over one applicant or multiple applicants who so requested the special meeting. If the planning consultant is requested by the applicant to review the application prior to formal submission of the application, the fee shall be \$150 for each consultation, which shall be deposited in the escrow account.
- iv. The sums hereinabove set forth are estimates and, during its review of an application for development, the approving Boards may determine that such sums are sufficient, excessive or insufficient, based upon the following criteria: The presence or absence of public water and/or sewer servicing the site.
 - i. Environmental considerations, including without limitation, geological, hydrological and ecological factors.
 - ii. Traffic impact of the proposed development.
 - iii. Impact of the proposed development on existing aquifer and/or water quality.
 - iv. Impact on improvements which might require off-tract or off-site contributions.
- v. In the event that the approving Board shall determine said amount is excessive, it shall, upon the prior written request of the applicant and by resolution, specify the amount that shall be deemed sufficient, including a specification, if appropriate, that no escrow be posted, and the excess of the escrowed amount over the amount so determined shall be refunded to the applicant, together with such interest as allowed by subsection 'J(i)' below. In the event that the approving Board shall determine the amount specified above is insufficient, it shall, by resolution, so specify and shall further set forth the additional amount required to be posted in light of the criteria specified herein. Said additional amount shall be paid by the applicant prior to advancing to the next step in the approval procedure.

H. Conditions and requirements.

- i. No subdivision plat or deed or site plan shall be signed, nor shall any zoning permits, building permits, certificates of occupancy or any other types of permits be issued with respect to any approved application for development until:
 - i. All bills for reimbursable services have been received by the municipality from professional personnel rendering services in connection with such application.
 - ii. Payment of such bills has been approved by the Planning Department of the Department of Economic and Housing Development.
 - iii. The applicant has reimbursed the municipality the excess of such bills over the escrowed amount otherwise herein provided for.
 - ii. If the amount of the deposit exceeds the actual cost as approved for payment by the Governing Body, the developer shall be entitled to a return of the excess deposit, together with such interest as allowed by subsection 'J(i)' below. The Chief Financial Officer shall determine the position of all escrow accounts and, where additional funds are required, it shall be the obligation of the Chief Financial Officer to notify the applicant, pursuant to N.J.S.A. 40:55D-53.2(c). Within a reasonable time, the applicant must post a deposit to the escrow account in an amount agreed upon by the City or Board and the applicant, pursuant to N.J.S.A. 40:55D-53.2(c). At the time of filing the application for development, the applicant shall execute an escrow agreement containing the terms set forth herein.
- I. No professional personnel submitting charges to the municipality for any of the services referred to in subsection 'a' above shall charge for any of the services contemplated by said section at any higher rate or in any different manner than would normally be charged to the municipality for similar work. Payment of any bill rendered by a professional to the municipality in respect to any service for which the municipality is entitled to reimbursement under this section shall in no way be contingent upon receipt of reimbursement by the developer, nor shall any payment to a professional be delayed pending reimbursement from a developer.
- J. Deposits received from any developer pursuant to this chapter shall be deposited in a banking institution or savings and loan association in this state insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the state, in an account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits. The municipality shall notify the applicant in writing of the name and address of the institution or depository in which the deposit is made and the amount of the deposit.
- i. When a deposit is in an amount of money in excess of \$5,000.00 the municipality shall not be required to refund an amount of interest paid on this deposit when the interest does not exceed \$100 for the year. If the amount of interest exceeds \$100, that entire amount shall belong to the applicant and shall be refunded to the developer by the municipality annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be; except that the municipality may retain for administrative expenses a sum equivalent to no more than 33 1/3% of that entire amount, which shall be in lieu of all other administrative and custodial expenses.

- K. Close-out procedures shall commence for an application review once the Board and/or the approving authority has granted final approval and signed the subdivision plat or site plan; or for improvement inspection once improvements have been approved pursuant to N.J.S.A. 40:55D-53. The applicant must give written notice by Certified Mail to the Chief Financial Officer, the approving authority, and the City Clerk that the application or improvements have been completed. After receipt of notice the professional and/or outside consultant must give the final bill to the Chief Financial Officer within 30 days and send a copy of the bill to the applicant. The Chief Financial Officer then shall give a written financial accounting identifying the use of the deposits to the applicant within 45 days of receipt of the final bill. The municipality shall pay the remaining balance in the deposit or escrow account including interest paid to the applicant with the final accounting.**
- L. For any dispute by the applicant of the charges made by a professional for services rendered in reviewing applications for development pursuant to this Section, the applicant shall notify, in writing, the Municipal Council of the City of Newark, with copies to the Chief Financial Officer, the Board hearing the application, and the professional, in accordance with N.J.S.A. 40:55D-53.2(a). The Municipal Council of the City of Newark shall attempt to resolve the dispute, pursuant to the procedures set forth in N.J.S.A. 40:55D-53.2(a). Upon a decision by the Municipal Council of the City of Newark, the applicant is afforded an appeal to the county construction board of appeals, pursuant to N.J.S.A. 40:55D-53.2(a).**
- M. All procedures and requirements of N.J.S.A. 40:55D-53.2 are incorporated herein; to the extent such procedures are not otherwise included within this Section.**

Section 2. This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

Section 3. The provisions of this Ordinance are severable. To the extent any clause, phrase, sentence, paragraph or provision of this Ordinance shall be declared invalid, illegal, or unconstitutional, the remaining provisions shall continue in full force and effect.

STATEMENT

This Ordinance amends the Newark Zoning and Land Use Regulations by creating a Section 12.3 in Chapter 15 of Title XLI of the City's code, entitled "Professional Review Fees, Escrows and Procedures." This section includes an escrow fee schedule, which will require developers to post a separate deposit in addition to the standard application fees.