



## Legislation Text

File #: 15-2171, Version: 1

**AN ORDINANCE AMENDING TITLE XXXXI “THE ZONING AND LAND USE REGULATIONS OF THE CITY OF NEWARK” TO ESTABLISH PROFESSIONAL REVIEW FEES AND ESCROWS FOR REVIEW AND ADMINISTRATION OF APPLICATIONS FOR DEVELOPMENT TO CENTRAL PLANNING BOARD AND/OR BOARD OF ADJUSTMENT.**

**Deferred 8-a 020316**

**Deferred 9-a (s) 020916**

**Deferred 9-a 021716**

**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 non-refundable application fees for applications to the Newark Central Planning Board and Zoning Board of Adjustment 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 has 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 both the Central Planning Board and the Board of Adjustment; and

**WHEREAS**, the Department of Economic and Housing Development proposes an amendment to the Land Use Procedures to include a new section 12.3 to Chapter 15 of the Zoning and Land Use Regulations (Title XXXXI) entitled “Professional Review Fees, Escrows and Procedures.”

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT TITLE XXXXI ENTITLED “ZONING AND LAND USE REGULATIONS” IS HEREBY AMENDED TO INCLUDE A NEW SECTION 12.3 UNDER CHAPTER 15 OF TITLE XXXXI FOR THE COST OF PROFESSIONALS TO THE CITY TO REVIEW AND ANALYZE APPLICATIONS:**

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

- A. 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 cost of 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.

- B. The City, through its Boards, shall require fees for technical and/or professional review services and testimony employed for 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 shall provide a Federal Tax Identification Number or Federal Social Security Number.
- C. The review services of staff professionals shall be charged at the total hourly compensation rate recognized by the City administration for each staff review professional times the 200% factor 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.
- D. An applicant shall be responsible for reimbursing the City, without limitation, for the following technical and/or professional expenses:
  - 1. All expenses of professional personnel incurred and paid by the City necessary to process an application for development before the approving Board, including, without limitation:
    - a) Charges for reviews by professional personnel of applications and accompanying documents;
    - b) Issuance of reports by professional personnel to the approving 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 or preparation of documents, including but not limited to easements, developers' agreements, deeds, resolutions of approval or the like; and Preparation for and attendance at hearings on the application.
  - 2. Applications for development shall include site plans, appeals, interpretation, subdivisions, variances, conceptual reviews and any other development application.
  - 3. The costs of expert advice and/or testimony obtained by the approving board in connection with its consideration of the application.

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.

- E. The term "professional personnel" or "professional services," as used herein, shall include the services of a duly licensed engineer, surveyor, planner, attorney, realtor, appraiser or other expert who would provide professional services to ensure an application complies with the standards set forth in this chapter and other experts whose testimony is in an area testified to by any of the applicant's experts

F. Escrow Fee Schedule

1. Subject to the provisions of subsection 'g' below, each applicant shall, prior to the application being ruled complete pursuant to the provisions of the Municipal Land Use Act, submit the following sum(s) to be held in escrow in accordance with the provisions hereof:

a) Residential Development

Number of Units

0 - 3

4 to 10

11 to 25

26 to 100

100 more

Escrow Amount To Be Posted \$2,000

\$0

\$4,500

\$7,500

\$10,000

b) All other development applications involving structures

Gross Floor Area (gfa)

0 to 999

501 to 1000

1000 to 5000

5001 to 10,000

10,001 to 15,000

15,001 to 20,000

20,001 to 25,000

25,001 to 100,000

Over 100,001

Escrow Amount To Be Posted

\$0

\$4,000

\$4,500

\$7,000

\$9,000

\$10,000

\$12,500

\$15,000

\$18,000

2. Escrows shall be deposited and disbursed pursuant to the provisions of N.J.S.A. 40:55D-53.1. Escrow deposits shall be replenished by the applicant as required by N.J.S.A. 40:55D-53h.
3. 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 fees 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 fund.
4. The sums hereinabove set forth are estimates and, during its review of an application for development, the approving Board may determine that such sums are sufficient, excessive or insufficient, based upon the following criteria:
  - a) The presence or absence of public water and/or sewer servicing the site.
  - b) Environmental considerations, including without limitation, geological, hydrological and ecological factors.
  - c) Traffic impact of the proposed development.
  - d) Impact of the proposed development on existing aquifer and/or water quality.
  - e) Impact on improvements which might require off-tract or off-site contributions.
5. 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 'g' 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.

G. Conditions and requirements.

1. 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:
  - a) All bills for reimbursable services have been received by the municipality from professional personnel rendering services in connection with such application.
  - b) Payment of such bills has been approved by the Planning Department of the Department of Economic and Housing Development.
  - c) The applicant has reimbursed the municipality the excess of such bills over the escrowed amount otherwise herein provided for.
2. 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 'i' below. The administrative officer shall determine the position of all escrow accounts and, where additional funds are required, it shall be the obligation of the administrative officer to so notify the applicant of the amounts needed. At the time of filing the application for development, the applicant shall execute an escrow agreement containing the terms set forth herein.

- H. 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 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.
- I. 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. The municipality shall not be required to refund an amount of interest paid on a deposit which 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 him 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.

### **STATEMENT**

This Ordinance amends Title XXXXI Ordinance amending Title XXXXI "The Zoning and Land Use Regulations of the City of Newark" to establish professional review fees and escrows for review and administration of applications for development to Central Planning Board and/or Board of Adjustment.