

ORDINANCE O.2209-2024

AN ORDINANCE AMENDING SECTION 39-12.23 "SCHEDULE OF ESCROW DEPOSIT FEES OF THE CODE OF THE TOWNSHIP OF EDISON

WHEREAS, the Township of Edison (hereinafter referred to as the "Township") is a public body corporate and politic in the County of Middlesex, State of New Jersey; and

WHEREAS, the Township wishes to amend Section 39-12.23, "Schedule of Escrow Deposit Fees of the Code of the Township of Edison"; and

WHEREAS, the Township wishes to ensure the health of safety of its residents by requiring a traffic study and environmental assessment for specific development applicants; and

NOW, THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Edison, in the County of Middlesex, State of New Jersey that Section 39-12.23 of the Code of the Township of Edison is hereby amended to read as follows:

Deletions are noted by ~~strikethrough~~

Additions are indicated by **bold underline**

Language that remains unchanged is not highlighted in any way.

§ 39-12.23 Schedule of Escrow Deposit Fees.

- a. The escrow deposit fees are established to cover the costs of professional services, including but not limited to: engineering, legal, planning, landscaping, traffic, environmental and other expenses incurred by the Township for the review of submitted materials for specific development applications. **For all applications seeking, Major Site Plan, Major Subdivision or relief pursuant to the terms of N.J.S.A. 40:55D- 70(D), the Technical Review Committee shall provide for the preparation of a traffic study and environmental assessment, in addition to any other experts as it shall deem appropriate given the subject matter of the application.** Escrow deposits required for professional services shall be based on the following:
 1. The Township, acting through its Planning Board, Zoning Board of Adjustment and/or Technical Review Committee shall require fees for technical and/or professional services and testimony employed to the Board in reviewing an application. Fees required for this purpose shall be held in an escrow account by the Township.
 2. Fees for technical and/or professional services shall be in addition to application fees, and any and all other required fees.
 3. By filing any type of application or appeal, an applicant shall consent to pay for professional review services which are reasonably necessary for the review, processing, research and/or memorialization of such application. These services may include, but need not be limited to, an attorney, professional planner, professional engineer, traffic engineer,

environmental consultant and/or other professional as deemed reasonable and necessary by the reviewing board.

4. ~~If the~~When the Board or the Technical Review Committee determines that, because of the complexity of an application, the services of a traffic engineer, sound expert, or other professional specialty other than board engineer, planner and attorney are needed, an additional escrow fee equal to the cost of the services may be required before the next scheduled hearing.
 5. All costs for the review of any application for development shall be paid before any construction permit is issued. Any remaining costs created during the construction process shall be paid in full before any temporary or full certificate of occupancy is issued.
 6. The review services of these professionals shall be charged at the hourly rate authorized or paid by the Township for professional services based upon the current fee schedule.
 7. Each applicant shall provide the Township with a federal tax identification number or federal social security number.
 8. All payments charged to the individual escrow account shall be pursuant to charges from the professionals stating the hours spent, the hourly rate and the expenses incurred. The municipality shall render a written final accounting to the applicant on the uses to which the escrow deposit was invoiced. Thereafter, the municipality shall, upon written request, provide copies of the vouchers to the applicant.
 9. The charge to the deposit shall be at the same contractual rate as all other work of the same nature by the professionals for the municipality. If the salary, staff support, and overhead for a professional review are provided by the municipality, the charge to the escrow deposit shall not exceed 200% of the sum of the products resulting from multiplying the hourly base salary of each of the in-house professionals and support staff by the number of hours spent on the respective review of the application for development.
- b. Residential Exceptions, Partial Waiver, and Resubmission Fee Waivers from Escrow Deposit Requirements.
1. Residential applications including but not limited to fencing, sheds, porches, patio's, decks, pools and minor residential building additions of less than 300 square feet gross floor area shall be exempt from escrow deposit.
 2. Development of or improvement to one single-family dwelling on an existing lot where no off-tract or municipal improvements which extend beyond the frontage of the lot are involved shall be exempt from escrow deposit requirements.
 3. Charitable and/or philanthropic organizations, civic, fraternal and/or religious nonprofit organizations may apply to the reviewing board for a reduction of 25% of the required escrow deposit. To qualify, any such organization must hold a tax-exempt status under the Federal Internal Revenue Code of 1954 (26 U.S.C. Section 501(c) or (d)). Notwithstanding the reduced escrow fee, the applicant shall still be responsible to pay all costs directly

associated with the review and memorialization of the application even if those costs exceed the sum of fees collected.

c. Escrow Fee Submission Required for Completeness.

1. The applicant shall submit the required escrow fee to the administrative officer prior to the application being reviewed by the Technical Review Committee for completeness. No application shall be determined complete, reviewed by professional staff, or placed on the agenda for a technical meeting or public hearing until the full required escrow fee has been submitted. If a technical question arises as to whether a particular fee is required, the Administrative Officer shall consult with the Technical Review Committee and appropriate Board Attorney to clarify the matter, however no application may be deemed complete or scheduled for a public hearing until all unresolved fees have been paid.
2. Required escrow deposits shall be in the form of money order or check payable to the Township of Edison.
3. The Administrative Officer shall maintain and provide to the Technical Review Committee and reviewing board, as a completeness item, an up-to-date record of all application and escrow fees calculated and collected for each application being heard. This shall be provided at every meeting of the committee or Board.
4. The Administrative Officer shall reject and return any attempted submission of plans delivered without the appropriate escrow fee, and shall direct the developer to provide the applicable fee to process any plan submission.

d. Escrow Fee for Informal or Concept Review.

1. Whenever an applicant requests an informal review of a concept plan involving technical or professional consultation, an escrow deposit shall be submitted in accordance with the schedule below which must be received prior to professional review. The fees listed below are for each informal review session. Any subsequent informal review sessions shall require submission of an additional review fee.
2. Informal review fees shall be as follows:
 - (a) Subdivision, site plan, use variance or any combination thereof shall be \$1,000.
 - (b) Capital project review fees shall be \$1,000.
 - (c) Request by private property owners for the vacation of a public road or portion thereof pursuant to N.J.S.A. 40:66-21: \$1,000.
3. When escrow fees are submitted for professional services for informal review, those fees submitted shall be considered an advance on the formal application fee for a subsequent application for the same development. When the subsequent full application is filed and the relative escrow fees are calculated for that submission, the applicant shall be entitled to an escrow credit equal to the amount submitted for the concept review. Any remaining escrow

fees after an informal review shall be allocated to the applicant's escrow account for that development.

- e. Escrow Fees for Development Applications. The following fees are required to be deposited in an escrow account for applications to the Planning Board and/or Board of Adjustment:
 - 1. Variances. (Fees shall be in addition to any required subdivision or site plan approval).
 - (a) Appeal or interpretation under N.J.S.A. 40:55D-70a or b: \$1,000.
 - (b) Bulk variance under N.J.S.A. 40:55D-70c: \$500 per each variance.
 - (c) Variance under N.J.S.A. 40:55D-70d: \$5,000 per each variance.
 - (d) Conditional use approval: \$5,000.
 - (e) Variance/Permit under N.J.S.A. 40:55D-36: \$1,000.
 - 2. Site Plan Applications: (Fees shall be in addition to any required variances or subdivision).

Type of Site Plan	Gross Floor Area or Number dwelling units	Escrow Fee
Minor Site Plan:	N/A	\$4,000
Major Site Plans:		
Preliminary Non-residential	1 to 5,000 square feet	\$5,000
Preliminary Non-residential	5,001 to 25,000 square feet	\$10,000
Preliminary Non-residential	25,001 to 100,000 square feet	\$15,000
Preliminary Non-residential	Over 100,000 square feet	\$20,000

Type of Site Plan	Gross Floor Area or Number dwelling units	Escrow Fee
Preliminary Residential	1 to 10 units	\$10,000
Preliminary Residential	11 to 25 units	\$15,000
Preliminary Residential	Over 50 units	\$20,000
Final Site Plan	All applications	\$5,000

3. Subdivision Applications (Fees shall be in addition to any required site plan or variances).

Type of Application	Total Number	
	Lots Proposed	Escrow Fee
Minor Subdivision	N/A	\$4,000
Major Subdivision:		
Preliminary	1 to 10 lots	\$10,000
Preliminary	11 to 25 lots	\$15,000
Preliminary	26 to 50 lots	\$20,000
Preliminary	51 to 100 lots	\$25,000
Preliminary	Over 100 lots	\$30,000
Final Subdivision	All Applications	\$7,500

4. Mixed uses. For an application involving more than one use, or a mixed-use application, the fee shall be calculated as the cumulative fee for each component of the development based on the above Preliminary and Final Major Site Plan fees for residential and non-residential development, plus any Subdivision, variance or other fees that are applicable.

5. Planned Unit Developments. For a planned unit development, fees shall be calculated as the

cumulative fee of each component of a development based on the above Preliminary and Final Major Site Plan fees for residential and non-residential development, plus any subdivision or variance fees that are applicable.

6. General Development Plan. The fee shall be \$5,000, in addition to any other Site Plan, Subdivision or Variance fees which may be applicable.
7. Special Design Elements. When, and as determined by the reviewing board, the proposed project includes a special design consideration, such as but not limited to a sanitary/storm sewer pump station, a potable water storage facility, traffic signalization devices, street vacation or improvement, or other off-tract improvements, the additional escrow fee shall be \$5,000.
8. Request for Rezoning. Any property owner seeking a rezoning of property shall, in addition to the fee paid pursuant to subsection § **39-12.18d8**, submit an escrow fee of \$4,000.
9. Single Family Lot with Off-Tract Improvements Extending Beyond the Frontage of the Lot. The development of or improvement to an individual single family dwelling on an existing lot where off-tract improvements or municipal improvements extend beyond the frontage of the lot shall require an escrow fee of \$3,000.
10. Single Family Lot Involving development or construction in a Wetlands, Wetlands Buffer, Steep Slope area, FEMA Repetitive Loss Area, and/or Flood Hazard Area. The development of or an improvement to an individual single family dwelling on an existing lot involving construction in any of the above circumstances or in a flood hazard area as set forth in Chapter **33**, Floodplain Management Regulations, shall require the payment of an escrow fee of \$3,000.
11. Total Escrow Fee. The sum of all Subdivision, Site Plan, Variance and other fees required by this subchapter shall be calculated to determine a "Total Original Escrow Fee."
12. Resubmissions.
 - (a) After an initial plan submission, each subsequent plan submission to the Township Planning/Zoning Department shall be considered a plan resubmission. Resubmissions shall include any submission of revised plans before, during, or after the technical review, public hearing, or resolution compliance period, or any time thereafter to satisfy conditions of approval or modify a proposed or approved plan.
 - (b) When submitting a revised plan resubmission, all applicants shall be required to pay a "Resubmission Escrow Fee" based on 50% of the "Total Original Escrow Fee" which shall be deposited into the applicant's escrow account to replenish funds therein. This resubmission fee shall be required for each resubmission of revised plans, regardless of how many times plans are resubmitted. This resubmission fee shall apply to all development applications.
 - (c) The "Resubmission Escrow Fee" shall apply to submission of all engineering and architectural plats and plans, and shall not be applicable to submission of revised reports,

typewritten documents, response letters, memorandum, or outside agency permits and approvals. When multiple engineering and architectural plats or plans, including any supporting documents, are submitted together in a single instance, this shall be considered one resubmission.

- (d) The Administrative Officer shall reject and return any attempted resubmission of plans delivered without the resubmission fee, and shall direct the developer to provide the applicable fee to process any plan resubmission.
 - (e) The Administrative Officer shall maintain and provide to the Technical Review Committee and/or reviewing board a record of all resubmission fees calculated and collected for each application. This shall be provided at every meeting of the committee or Board.
 - (f) The "Resubmission Escrow Fee" shall be applicable to all submissions described hereinabove, but shall not be applicable to plan submissions after an application has been formally withdrawn or for applications for which the escrow account for has been terminated by way of refund. In those instances, a new "Original Escrow Fee" shall be calculated and apply.
- f. Review of Escrow Deposit Amount.
- 1. Prior to certifying completeness upon any application, the Administrative Officer and Technical Review Committee shall review the application materials, content, checklist, and fees to verify the escrow amount set forth above is sufficient for the professional review of the application. If the amount set forth is determined insufficient to cover professional costs anticipated for the application, additional funds in the amount of 33% of the initially required escrow fee shall be deposited by the applicant prior to declaring the application complete. The application shall not be declared complete or placed on the agenda for public hearing until such additional escrow deposit is received.
 - 2. Further additional escrow deposit fees may be required at any time upon determination by the Administrative Officer.
 - 3. All approvals shall be conditional upon receipt of such additional fees deposited by the applicant in increments of 50% of the "Total Original Escrow Fee," when and as determined necessary by the Administrative Officer. All costs for the review of any Application for Development shall be paid before any construction permit is issued. Any remaining costs created during the construction process shall be paid in full before any temporary or full certificate of occupancy is issued.
- g. Appeal of Escrow Fees. In the event that the applicant believes the fees to be unreasonable, the Planning Board or Board of Adjustment shall hear and decide whether such fees are reasonable. The applicant may appeal the decision of the Planning Board or Board of Adjustment to the Governing Body, provided that the applicant shall provide to the Governing Body transcripts of the Planning Board or Board of Adjustment hearing on fees, at his or her cost, and such appeal shall be on the record. The Governing Body shall set a meeting date, with notice to the applicant. The applicant may submit oral and/or written arguments on the record, provided that the applicant provides a court-certified stenographer

to record the meeting and provides a transcript of the meeting. The Governing Body may reverse a Planning Board or Board of Adjustment decision upon showing that the Board's decision is not sustained by the preponderance of the evidence.

- h. Escrow Deposit Accounts. The escrow amount shall be deposited by the Township into an official depository of the Township in a separate interest-bearing escrow account in the name of the Township and the applicant. The custodian of the account shall be the Township Director of Finance. The custodian shall notify the applicant, in writing, of the name and address of the depository and the amount of the deposit. Disbursements for professional review services shall be made in accordance with State law and Township procedures. Deposit amounts shall be transmitted pursuant to State statute and applicable Township regulations and ordinances. When charges for review fees are received by the custodian of the escrow account, the amounts shall be transferred to the appropriate account(s) of the Township for approval and disbursements. In accordance with N.J.S.A. 40:55D-53.1, sums not utilized in the review process shall be returned to the applicant. If additional sums are deemed necessary, the applicant shall be notified of the required additional amount and shall add such sum to the escrow as detailed elsewhere in this subsection.
- i. Escrow Accounts Over \$5,000; Conditions. Pursuant to N.J.S.A. 40:55D-53.1, whenever an amount of money in excess of \$5,000 shall be deposited by an applicant in the Township for professional services employed by the Township to review applications, the money, until repaid or applied to the purposes for which it is deposited, including the applicant's portion of the interest earned thereon, except as otherwise provided for therein, shall continue to be the property of the applicant and shall be held in trust by the municipality. Money deposited shall be held in escrow in an account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits. The Township 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 Township shall not 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 or her by the Township at the time that the unexpended deposit is repaid or applied to the purpose for which it was deposited, as the case may be; except that the Township shall 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.
- j. Accounting of Fees. In the event that any applicant desires an accounting of the expenses or fees paid by him or her for professional review, he or she shall request such in a letter directed to the Township Director of Finance. In the event that there are found insufficient escrow funds in the account to pay all outstanding invoices, the outstanding balance shall be submitted by the applicant prior to issuance of a certificate of occupancy or building permit.
- k. Refunds. All escrow funds described herein shall be utilized by the appropriate board to pay the cost of any technical and/or professional services incurred by the Board for review and/or testimony in connection with the particular application. All remaining funds not expended shall be refunded to the applicant upon request within 120 days after the final determination by the board with respect to such application. If conditions of approval are

required by any approving resolution, the escrow account may remain active for such extended time as to allow the applicant to pursue resolution compliance via submission and professional review of revised plans or documents. However, in any case, no amount shall be refunded prior to written certification by the Administrative Officer that all professional services invoices are paid.

- l. Refunds after Application Withdrawal. Upon submission of a written withdrawal request, all remaining funds not expended shall be refunded to the applicant within 120 days after withdrawal. However, in all cases, no amount shall be refunded prior to written certification by the Administrative Officer that all professional services invoices are paid.
- m. Refunds Without Resolution Compliance. If an Application for Development has been approved subject to conditions of approval, and the applicant later withdraws the application and/or requests a refund of escrow fees without satisfying the required conditions of approval, the escrow account may be terminated and all remaining funds not expended shall be refunded to the applicant within 120 days after withdrawal and/or request. However, in all cases, no amount shall be refunded prior to written certification by the Administrative Officer that all professional services invoices are paid.
- n. Refund and/or Application Withdrawal shall Constitute Termination of Application. A request for withdrawal and/or refund shall be considered an affirmative act of termination of the application. After which, any subsequent resubmission of an application, with or without changes, shall be considered a new application and shall be subject to the Original Escrow Fee in effect for a new application, not the Resubmission Escrow Fee permitted elsewhere in this subsection.
- o. Rules and Regulations. Pursuant to municipal Charter, the Township shall promulgate rules and regulations for the administration of all processing of the provisions of this escrow deposit ordinance in compliance with all applicable Township ordinances and State laws.
- p. Non-Payment. Filing of an Application for Development shall inherently include an agreement to pay for the reasonable costs of the professional review and memorialization of that application. If an applicant or property owner refuses to, or fails to, pay any outstanding and reasonable costs incurred in the review or memorialization of an application, regardless of the Board's determination, the Township will place a lien on said property associated with the application to recover the professional costs incurred to the Township, in compliance with all applicable Township ordinances and State laws.

BE IT FURTHER ORDAINED, all ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency; and

BE IT FURTHER ORDAINED, if any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance, which shall otherwise remain in full force and effect; and

BE IT FURTHER ORDAINED, that this ordinance shall take effect following adoption and approval in a time and manner prescribed by law

FIRST READING
FINAL READING

February 15, 2024
February 28, 2024