

**BOROUGH OF TINTON FALLS
COUNTY OF MONMOUTH
NOTICE OF PENDING ORDINANCE**

ORDINANCE NO. 11-1326

The ordinance published herewith was introduced and passed upon first reading at a meeting of the Borough Council of the Borough of Tinton Falls, in the County of Monmouth, State of New Jersey, held on September 20, 2011. This Ordinance will be further considered for adoption, after the public hearing is held thereon, at a meeting of the Borough Council to be held on Tuesday, November 1, 2011, located in the Tinton Falls Municipal Building, 556 Tinton Avenue, Tinton Falls, New Jersey, beginning at 7:30 o'clock P.M. During the week prior to and up to and including the date of such meeting, copies of said Ordinance and Schedule F will be made available in the Clerk's Office to the members of the general public who shall request the same.

MAUREEN L. MURPHY, BOROUGH CLERK

**BOROUGH OF TINTON FALLS
COUNTY OF MONMOUTH
ORDINANCE NO. 11-1326**

AN ORDINANCE OF THE BOROUGH OF TINTON FALLS, COUNTY OF MONMOUTH, STATE OF NEW JERSEY - AMENDING CHAPTER XL (LAND USE REGULATIONS)

WHEREAS, NJSA 40:55D-89 provides for the periodic revision of Municipal Master Plans and Regulations by Municipal Entities within the State of New Jersey; and

WHEREAS, the Borough Council of the Borough of Tinton Falls has requested the Planning Board of the Borough of Tinton Falls to revise its master plan and development regulations in accordance with such statutes; and

WHEREAS, the Borough of Tinton Falls Planning Board has completed and adopted its Master Plan Revision and submitted the Master Plan to the Governing Body, dated April, 2007; and

WHEREAS, pursuant to NJSA 40:55D-62, the Borough Council has the power to adopt or amend any ordinance related to the nature and extent of uses of land, buildings and structures thereon; and

WHEREAS, The Borough Council reviewed the Planning Board of the Borough of Tinton Falls' revised Master Plan, its recommendations to repeal the prior land use ordinance and to replace it with a new Land Use Development Ordinance after public hearings and in accordance with NJSA 40:55D-28, et seq.; and

WHEREAS, the Borough Council of the Borough of Tinton Falls, after public hearing and receiving public input and the recommendation of professionals, deemed it in the best public interest of the residents of the Borough of Tinton Falls to adopt a new Land Use Development Ordinance on the recommendation of the Planning Board on May 19, 2009; and

WHEREAS, the Borough Council of the Borough of Tinton Falls, pursuant to recommendations from the Borough Clerk, Zoning Officer, Zoning Board Secretary, and the Borough Planner, deemed it in the best public interest of the residents of the Borough of Tinton Falls to revise the fee and escrows section of the Land Use Development Ordinance adopted May 19, 2009, to organize and reflect the true cost of the administration of the new Land Use Regulations;

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Tinton Falls, Monmouth County, State of New Jersey that Chapter XL (Land Use Regulations) is hereby amended as follows:

Section 1: Article III. Section 40-7 FEES shall be repealed and replaced with the following:

40-7. FEES - Any applicant to the Planning Board or the Zoning Board of Adjustment shall pay the following to the Borough of Tinton Falls at the time of application.

A. Fee Categories.

1. An initial application fee to defray the Administrative costs of the Planning and the Zoning Offices. (See Schedule F - Borough of Tinton Falls Planning & Zoning Board Fee Schedule).
2. Escrow moneys to be deposited to pay the cost of any professional fees incurred for the review of a submission for development. Said escrow moneys shall be placed in an escrow account pursuant to §40-8, Escrow Deposits. Additional deposits will be required to be paid into the escrow account in order to cover additional professional reviews and services in the event the initial escrow deposit has been reduced to an insufficient amount to cover anticipated costs. (See Schedule F - Borough of Tinton Falls Planning & Zoning Board Fee Schedule).
3. Professional review fees not covered under Escrow Fee Deposits including any and all professional review fees incurred by the Planning Board and the Zoning Board of Adjustment during the application process and attendance of the Attorney, Engineer and Planner at Regular and Work Session meetings.
4. Any and all professional review fees incurred by the Planning Board or the Zoning Board of Adjustment during the application process.
5. Upon the written request of an applicant, the administrative officer shall, within seven (7) days, make and certify from the current tax duplicates a list of the names and addresses of owners to whom the applicant is required to give notice pursuant to N.J.S.A. 40:55D-12(b). In addition, the administrative officer shall include on the list the names, addresses, and positions of those persons who, not less than seven (7) days prior to the date in which the applicant requested the list, have registered to receive notice pursuant to N.J.S.A. 40:55D-12(h). The applicant shall be entitled to rely upon the information contained in such list, and the failure to give notice to any owner or to any public utility, cable television company or local utility not on the list shall not invalidate any hearing or proceeding. The fee for said list shall be ten (\$10.00) dollars or twenty-five (\$0.25) cents per name, whichever is greater.

B. Amount of Application Fees. No application shall be deemed complete or proceed before the Board, or receive final action on the application, until all fees are paid and the required escrow deposits (see §40-8) are received by the Borough and posted with the Department of Finance. With any application fee amounts over five thousand (\$5,000.00) dollars, the Borough reserves the right to retain thirty-three and one-third percent (33 1/3%) of the interest accrued for administrative costs; the balance of the interest shall be paid to the applicant. Escrow moneys that are not allocated for the above will be returned as soon as possible after completion of the application upon written request by the applicant and after payment of all final bills for professional services rendered. See Schedule F - Borough of Tinton Falls Planning & Zoning Board Fee Schedule for all application fees.

C. Calculation of Fees.

1. Submissions involving more than one (1) use shall pay a fee equaling the sum of the fees for the component elements of the plan.
2. Submissions involving a combination of approvals filed concurrently including but not limited to subdivision, site plan and/or variance shall pay the highest fee in full, plus one-half (1/2) of each other fee applicable for each additional approval required.
3. Submissions involving a combination of approval, not filed concurrently shall pay the full fee as imposed herein.
4. Where a submission involves part of unit of measure on which a fee is based, said unit of measure shall be rounded upward to the next whole unit.

Section 2: Article III. Section 40-8 ESCROW DEPOSITS shall be shall be repealed and replaced with the following:

40-8. ESCROW DEPOSITS

- A. The Borough shall make all of the payments to professionals for services rendered to the Borough for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions of PL 1975. c. 291 (C.40:55D-1 et seq.). If the Borough requires of the applicant a deposit toward anticipated Borough expenses for these professional services, the deposit shall be placed in an escrow account by the Borough Treasurer pursuant to section 1 of PL 1985, c. 315 (C.40:55D-53.1). The amount of the deposit required shall be reasonable in regard to the scale and complexity of the development. All payments charged to the escrow account shall be pursuant to vouchers from the professionals stating the hours spent, the hourly rate, and the expenses incurred. The Borough shall render a written final accounting to the applicant on the uses to which the deposit was put. Thereafter the Borough shall, upon written request, provide copies of the vouchers to the applicant. If the salary, staff support and overhead for a professional are provided by the Borough, the charge of the deposit shall not exceed two hundred percent (200%) of the sum of the products resulting from multiplying (1) the hourly base salary of each of the professionals by (2) the number of hours spent by the respective professional on review of the application for development or the applicant's improvements, as the case may be. For other professionals the charge to the deposit shall be at the same rate as all other work of the same nature by the professional for the Borough. Services rendered by other Board professionals (landscaping, environmental, and traffic consultants) will be charged to escrow deposits.
- B. No submission, including a General Development Plan application, shall be deemed complete and no action to approve or conditionally approve an application shall be taken until such time as the applicant shall have posted with the Borough in cash, certified check, or money order the amount of escrow required to be deposited as calculated from the following schedule. If during the processing of the application the funds remaining in the escrow account are depleted to within five hundred (\$500.00) dollars, but in any event not less than ten percent (10%) of the original deposit, the applicant shall deposit additional funds equal to the larger of either five hundred (\$500.00) dollars or twenty percent (20%) of the original deposit before the application shall proceed before the Board and prior to action to approve or conditionally approve the application. The Board may dismiss an application in the event the escrow deposit is not initially sufficient, or is not adequately replenished to allow the processing of the application to continue.
- C. The Administrative Officer shall review the submission to determine whether the escrow amount set forth herein and posted by the applicant is adequate to fund the review of the submissions. The Administrative Officer shall consider the following criteria in making such determination.
1. Presence or absence of public water and/or public sanitary sewer serving the site.
 2. Environmental consideration including, but not limited to geological, hydrological and ecological factors required to be addressed in an Environmental Impact Report.
 3. Presence of critical areas as identified by the Borough of Tinton Falls Master Plan.
 4. Traffic impact of the proposed development.
 5. Impact of the proposed development on existing aquifers and water and water quality.
- The Administrative Officer shall then determine whether the escrow amount specified is sufficient, excessive or insufficient. Such determination shall be filed with the applicable Borough Agency and the applicant. In the event that the amount posted is deemed to be excessive or that no escrow amount is required, same shall be refunded within thirty (30) days. In the event that the additional moneys are required, then the Borough Agency shall make a determination which shall be deemed binding upon the parties.
- D. In the event that the applicant disagrees with the determination of the Administrative Officer of the escrow fee amount, then the Board shall make a determination which shall be deemed binding upon the parties.
- E. All such escrow funds shall be utilized by the Borough to pay all costs of any professional fees incurred by the Borough for review and/or testimony in connection with the applicant's

- submission. All sums not actually so expended shall be refunded to the applicant upon applicant's written request for a refund within sixty (60) days after the final determination by the Borough Agency.
- F. If additional moneys were expended over the posted escrow amount, the applicant shall pay such moneys within fourteen (14) days of notification. Payment of such moneys shall be a mandatory condition of approval of all action taken by the Borough Agency. No construction permit shall be issued until all such fees are paid. No commencement to build certificate will be issued by the Code Enforcement Officer until all additional expenses in connection with the application are settled and an escrow certificate indicating "paid in full" will be issued by the Borough Finance Department as proof of payment. Any escrow moneys outstanding after the thirty (30) days notification period will be passed to the Borough's Legal Department for collection in the form of a lien on the property, and subject to interest at the rate of one percent (1%) above current prime rate as posted in the Wall Street Journal.
- G. G.I.S. Revision Escrow. Each applicant is required to pay G.I.S. Revision fees to the Planning Board or the Zoning Board of Adjustment. Three (\$3.00) dollars of the Zoning Board of Adjustment variance application GIS fee, six (\$6.00) dollars of the development application GIS fees and three (\$3.00) dollars of the development applications that require variances GIS fee will be placed in an escrow account to be utilized for a computerized document management system.
- H. Refund.
1. Should an application be withdrawn after commencement of completeness review, the applicant will be responsible for any and all planning and engineering fees accrued to date. Any debit or credit will be settled within thirty (30) days of written withdrawal notice.
 2. Escrow Moneys. Applicable to above, will be refunded with interest less any professional fees owing to date within thirty (30) days of written application of withdrawal.
- I. Implementation.
1. Submission filed after the effective date of this Chapter shall submit fees and escrow specified herein at the time of filing.
 2. Submissions presently filed but without a final determination by the Borough Agency shall submit fees and escrow specified herein based upon accrual of expenditures within thirty (30) days of notification.
- J. Modified Fee Schedule for Charitable Organizations. Any charitable, philanthropic, fraternal and religious nonprofit organization, holding a tax exempt status under the Federal Internal Revenue Code of 1954 [26 U.S.C. 501 (c) or (d)] may apply at the time of its submission of an application for a modification to the fee schedule as set forth herein for development applications involving nonprofit activities. Upon receipt of such a request, the Division of Planning and Zoning shall obtain from the appropriate retained consultants including but not limited to engineering, planning, environmental, traffic, landscaping, and legal of the Borough an estimate of the fees to be charged for the review of the application. The Division of Planning and Zoning
- K. shall so notify the applicant and require the applicant to post the estimated fees into
- L. an escrow account pursuant to this Chapter which shall be utilized solely for the payment of the Borough's retained consultant for the review of the application.
- In no event shall the estimate of such fees exceed the fee schedule as contained herein. Appeals to the fees set by the Division of Planning and Zoning shall be heard by the Board. If after the completion of the application, which for this purpose shall be deemed to include satisfaction of all conditions contained in any resolution of approval, such applicant shall apply to the Division of Planning and Zoning for an accounting of the expenditures and the return of any unexpended funds held in trust.
- M. The municipality shall exempt a board of education from payment of any fee charged under this act.

Section 3: Schedule F - Borough of Tinton Falls Planning & Zoning Board Fee Schedule is hereby created and attached.

Section 4: Any and all Ordinances inconsistent with this ordinance are hereby repealed to the extent of any such inconsistency,

Section 5: Should any section, part or provision of this ordinance be deemed invalid or unconstitutional, such decision shall not effect the validity of the remaining terms of this ordinance as a whole or any part thereof, other than section, part or provision so held invalid or unconstitutional.

Section 6: This ordinance shall take effect on its final passage and publication as provided by law.