

**BOROUGH OF FRANKLIN**

**ORDINANCE No. 13-2019**

**AN ORDINANCE OF THE BOROUGH OF FRANKLIN, COUNTY  
OF SUSSEX, AND STATE OF NEW JERSEY AMENDING  
CHAPTER 161 LAND DEVELOPMENT**

BE IT ORDAINED by the Mayor and Council of the Borough of Franklin, County of Sussex, and State of New Jersey that the Franklin Borough Code is amended as follows:

**SECTION I**

Sections 161-42 E through I are hereby replaced as follows:

**Article VII Fees and Deposits**

**161-42 Technical, Planning, Zoning and Application Review Escrow Account Deposits**

E. All review and inspection escrow account deposits shall be placed into an escrow account, which shall be maintained by the Chief Financial Officer of the Borough of Franklin. The Chief Financial Officer shall make all payments from the escrow account.

a. In addition to the initial application fees or charges as set forth in Chapter 119, Fees, the Borough shall require escrow account deposits in accordance with the provisions of the schedule set forth in Chapter 119. The Chief Financial Officer shall make all payments to professionals for services rendered to the Borough, the Board 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. 40:55D-1 et seq. The application review and inspection charges shall include, but not be limited to, professional charges for review of applications, attendance at meetings, preparation of documents, rendering advice or opinions, or other services reasonably required to provide professional guidance, review and preparation of documents and inspection of developments under construction and for review by outside consultants when an application is of a nature beyond the scope of the expertise of the professionals normally utilized by the Borough. The only costs to be added to such charges shall be actual, out-of-pocket expenses of such professionals or consultants including normal and typical expenses incurred in processing applications and inspecting improvements. No applicant shall be charged for any Borough, clerical or administrative functions, overhead expenses, meeting room charges or any of the Borough costs and expenses except as provided for specifically by statute or ordinance, nor shall a Borough professional add any such charge to his bill.

b. The Borough shall be reimbursed by the applicant for professional fees for the review of applications, both as to completeness and as to content; for the review and preparation of documents such as, but not limited to; drafting resolutions, developer's agreements, and necessary correspondence with applicant or applicant's professionals.

c. The escrow account deposits and fees in Chapter 119 are promulgated on the assumption of the applicant submitting completed applications and plans in conformance with the applicable ordinances.

d. The schedule of escrow account deposits and fees in Chapter 119 are an estimated initial cost to the Borough related to the land development review process. Nothing contained herein shall prohibit the applicable Board from requiring the applicant to reimburse the Borough for all additional reasonable professional review costs of the application. Any application lacking a sufficient escrow account deposit to permit the Board and its professionals to proceed may be continued without action (in which event all deadlines are tolled until sufficient funds are paid) or may be dismissed without prejudice.

e. Whenever an escrow account deposit shall be made by an applicant for professional services to review applications for development, inspection fees to satisfy the requirement for any performance guaranty or the requirement for any maintenance guaranty pursuant to this chapter, such money, until repaid, or applied for the purposes for which it was deposited, shall continue to be the property of the applicant and shall be held in trust by the Borough except as otherwise provided for this section.

f. The Borough shall place all escrow account deposits in a banking institution or savings and loan association located in the State of New Jersey and insured by an agency of the federal government or in any other fund or depository approved for such deposits by the state of New Jersey.

g. The Borough shall notify the applicant, in writing, of the name and address of the institution or depository in which such deposit is made and the amount of the deposit. The Borough 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 for any year, that entire amount shall belong to the applicant and shall be refunded to the applicant by the Borough at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be. Notwithstanding anything to the contrary above, the Borough may retain for administrative expenses a sum equal to 33 1/3% of the annual interest earned by such deposit. The amount so retained shall be in lieu of all other administrative and custodial expenses charged by the Borough in connection with the deposit.

F. Vouchers; Payments

a. All professional fees charged to an applicant's escrow account shall be pursuant to vouchers from the professionals performing services in connection with the application. All vouchers shall identify the professional performing the services, the dates when services were performed, the hours spent in one-quarter-hour increments, the hourly rate and the expenses incurred.

b. All outside professionals shall submit vouchers to the Chief Financial Officer on a monthly basis. A copy of the voucher shall be sent to the applicant simultaneously. All in-house professionals shall submit to the Chief Financial Officer on a monthly basis a

statement containing the same information as the voucher of an outside professional. A copy of the statement shall be sent to the applicant simultaneously.

c. The Chief Financial Officer shall prepare and send to the applicant on a monthly basis a statement providing an accounting of the applicant's escrow account deposit. The accounting shall include all deposits made, disbursements made and cumulative deposit balance. Notwithstanding the foregoing, if monthly charges to an applicant's deposit are \$1,000 or less, such statement may be provided by the Chief Financial Officer on a quarterly basis.

G. Replenishing of escrow account deposit. If an escrow account deposit shall be insufficient to enable the Borough, the reviewing board or its professionals to perform anticipated reviews, the Board Secretary shall notify the applicant (this notice is referred to herein as an "insufficiency notice") of both the insufficient deposit balance and the amount of additional funds required, to be determined in consultation with the professionals.

a. When the escrow account falls below the 25% level of the original amount deposited, the Board Secretary shall notify the applicant and the applicant shall immediately replenish the account by depositing one hundred (100%) percent of the original review deposit into the escrow account. No approving authority or its professional staff shall take any further action on the application, nor shall any plats be signed or construction commenced or completed until adequate additional fees have been deposited with the Borough. Any application lacking sufficient funds to permit the Board to proceed may be dismissed without prejudice. When there exists any deficiency in the applicant's escrow account deposit, failure to pay the required supplement within ten (10) business days shall toll or stop the time in which the Board must act on the application.

b. The applicant must maintain the escrow account deposit for any further services by the Board Professionals after any approvals by the Board. If the Applicant fails to maintain the escrow account deposit at the required amount, the Board shall issue a letter of "hold approvals and inspection order" to the Construction Department and Borough Department of Public Works. After applicant's Board approvals, the Board Professionals shall submit a good faith estimate as to the cost the Borough is likely to incur in additional professional services. In the event that an applicant's escrow account deposit shall be depleted prior to the completion of professional estimated work, the Board Secretary shall immediately notify the applicant in writing, that there is or will imminently be a deficiency in the applicant's escrow account. The applicant shall forthwith deposit the amount of the additional escrow estimated by the professional's statement.

c. The applicant must maintain the application escrow account deposit after any approvals/denials by the Board. Should any fees for applications for development, review fees, inspection fees or fees of any nature connected with an application be due and unpaid by the applicant for development and/or owner of the subject property for a period of fifteen (15) days after written notice of the amount due was mailed to the applicant/owner, the Board Secretary shall notify the Borough Clerk, Mayor or Administrator or other officer of the Borough of Franklin, who may execute a written statement of lien showing the amount due to the Borough and may record the same in the Sussex County Clerk's office as a lien

on the subject property. The lien shall include interest at the rate of 12% per annum, recording fees and a reasonable attorney fees.

H. Final accounting; Return of unused balance of escrow account deposit. The applicant will receive a refund of any escrow account balance remaining after all vouchers pertaining to the application have been submitted. A written request must be submitted to the Board Secretary stating that the application process is complete and requesting that all remaining escrow may be returned. This process can take up to ninety (90) business days from the time of a Certificate of Occupancy/Approval by the Construction Department since the refund must be approved by the Board, and then the Borough Council. After the Board has granted final approval and signed the approved subdivision plat or site plan, or otherwise taken final action on the application, the applicant shall provide written notice of same, by certified mail, return receipt requested, or by personal delivery, to the Chief Financial Officer, the Board Secretary, the reviewing board and all professionals who have rendered services in connection with the application. The Chief Financial Officer shall render to the applicant a final accounting within 45 days after receipt of all final bills and/or statements. The Chief Financial Officer shall return to the applicant with the final accounting any unused balance of the escrow account deposit, including any interest earned thereon.

I. Appeals; Objections. The governing body, or its designee, shall within a reasonable time period attempt to mediate any disputed charges. If the matter is not resolved to the satisfaction of the applicant, the applicant may appeal to the county construction board of appeals any charge to an escrow account deposit by any municipal professional or consultant. An applicant shall file an appeal within 45 days from receipt of a professional's voucher, except that if the professional has not supplied the applicant a voucher, then the applicant shall file his appeal within 60 days from receipt of the accounting statement. The applicant or his authorized agent shall simultaneously send a copy of the appeal to the municipality, approving authority, and any professional whose charge is the subject of the appeal. The county construction board of appeals shall hear the appeal, render a decision thereon, and file its decision with a statement of the reasons therefor with the municipality or approving authority. During the pendency of any appeal, the municipality or approving authority shall continue to process, hear, and decide the application for development, and to inspect the development in the normal course, and shall not withhold, delay, or deny reviews, inspections, signing of subdivision plats or site plans, the reduction or the release of performance or maintenance guarantees, the issuance of construction permits or certificates of occupancy, or any other approval or permit because an appeal has been filed or is pending under this section.

## **SECTION II**

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistencies.

## **SECTION III**


If any article, section, subsection, paragraph, phrase or sentence is, for any reason, held to be unconstitutional or invalid, said article, section, subsection, paragraph, phrase or sentence shall be deemed severable.

**SECTION IV**

This Ordinance shall take effect immediately upon final publication as provided by law.

ATTEST:

**BOROUGH OF FRANKLIN**


  
\_\_\_\_\_  
Darlene J. Tremont, CLERK

  
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BY: Nicholas Giordano, MAYOR

DATED: July 16, 2019


**NOTICE**

**NOTICE** is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Council of the Borough of Franklin held on June 25, 2019, at 7:00 p.m. and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Borough Council to be held on July 16, 2019, at 7:00 p.m., or as soon thereafter as the Borough Council may hear this Ordinance at the Municipal Building, 46 Main Street, Franklin, New Jersey 07416, at which time all persons interested may appear for or against the passage of said Ordinance.

  
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Darlene J. Tremont  
Municipal Clerk

**CERTIFICATION**

I, Darlene J. Tremont, Clerk of the Borough of Franklin, do hereby certify that the Borough of Franklin Council duly adopted the foregoing Ordinance on the 16th day of July, 2019.

  
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Darlene J. Tremont, Clerk  
Borough of Franklin

  
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Nicholas Giordano, Mayor

Introduced: June 25, 2019

Adopted: July 16, 2019

**ORDINANCE No. 13-2019**

**AN ORDINANCE OF THE BOROUGH OF FRANKLIN, COUNTY  
OF SUSSEX, AND STATE OF NEW JERSEY AMENDING  
CHAPTER 161 LAND DEVELOPMENT**

<b>RECORD OF COUNCIL VOTES-FIRST READING</b>					<b>Move</b>	<b>2nd</b>
<b>COUNCIL MEMBER</b>	<b>AYES</b>	<b>NAYES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>		
JOSEPH LIMON	X					
JOHN POSTAS	X					
STEPHEN SKELLENGER COUNCIL PRESIDENT				X		
GILBERT SNYDER	X				X	
GLENN SOULES	X					X
STEPHAN ZYDON, JR.	X					
MAYOR GIORDANO (Tie Only)						

<b>RECORD OF COUNCIL VOTES-SECOND READING</b>					<b>Move</b>	<b>2nd</b>
<b>COUNCIL MEMBER</b>	<b>AYES</b>	<b>NAYES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>		
JOSEPH LIMON		X				
JOHN POSTAS		X				
STEPHEN SKELLENGER COUNCIL PRESIDENT	X					
GILBERT SNYDER	X				X	
GLENN SOULES	X					X
STEPHAN ZYDON, JR.	X					
MAYOR GIORDANO (Tie Only)						

**BOROUGH OF FRANKLIN  
LEGAL NOTICE**

**ORDINANCE No. 13-2019**

**AN ORDINANCE OF THE BOROUGH OF FRANKLIN,  
COUNTY OF SUSSEX, AND STATE OF NEW JERSEY  
AMENDING CHAPTER 161 LAND DEVELOPMENT**

NOTICE is hereby given that the above Ordinance was introduced and passed on first reading at a meeting of the Borough Council of the Borough of Franklin, in the County of Sussex, State of New Jersey, held in the Borough Municipal Building, 46 Main Street, Franklin, NJ, on the 25<sup>th</sup> day of June, 2019, and the same came up for final passage at a meeting of the said Borough Council on the 16<sup>th</sup> day of July, 2019, at which time, after persons interested were given an opportunity to be heard concerning said ordinance, the same was passed and will be in full force in the Borough according to law by order of the Borough Council of the Borough of Franklin, County of Sussex and State of New Jersey.



Darlene J. Tremont, Municipal Clerk