

williams&works

engineers | surveyors | planners

MEMORANDUM

To: Douglas City Council
Date: January 25, 2023
From: Tricia Anderson, AICP
Andy Moore, AICP
RE: **Escrow Policy and Fee Schedule**

At the February 6th 2023 meeting, the City Council will consider the adoption of a resolution to adopt an escrow policy as well as an amended fee schedule. The purpose of this memorandum is to provide context and current information as it pertains to fees that other similar communities are charging for the services they provide.

Escrow Policy. As you know, the City contracts and consults with several professionals to facilitate and provide expert reviews and recommendations on many types of applications, such as professional engineers, planners, attorneys, and others as needed. It is appropriate that the applicant seeking approval should incur the expenses from the City using professional consulting services for review of their projects, and not the taxpayers of the City. Thus, many types of application fees are divided into two parts: (1) a non-refundable application fee that is used for paying expenses associated with the application (such as newspaper notices, planning commission meetings, etc.) and (2) a refundable escrow fee, where funds are collected and placed in an escrow account. The Treasurer will then use the funds from the escrow accounts to pay invoices from consultants as it pertains to a specific project. If any funds remain in the escrow account once the application is processed and complete, they are returned to the applicant.

The escrow policy is specifically referenced in the City's Zoning Ordinance, however, the City's records were absent relative to such a policy. The best practice would be to adopt a fresh escrow policy that reflects the intent and purpose stated in Section 23.03, Permit Procedures and Regulations from Article 23, Administration and Enforcement.

Sections 23.03(3)(d), Fees, states the following:

*d) **Fees:** Fees for review of development proposals, inspections, and the issuance of permits or certificates required under this Ordinance shall be deposited with the City Treasurer in advance of processing any application or issuance of any permit. The amount of such fees shall be established by the City Council, and shall cover the cost of inspection and supervision resulting from the review, administration, and enforcement of this Ordinance. Such costs may include, but are not limited to, all costs associated with conducting a public hearing or inspection, including newspaper notice, postage, photocopying, staff time, Planning Commission, Council and/or Zoning Board of Appeals time, mileage, and any costs incurred or associated with reviews and attendance at meetings relating to development proposals by qualified professional planners, engineers, or legal counsel. **Such fees may be collected in escrow pursuant to the escrow***

policy adopted by the Council or as may be amended from time to time. Any unexpended balance of the escrow shall be returned to an applicant according to the procedure described below:

- (1) For any application for approval of a Site Plan, Special use, Planned Unit Development, variance, or other use or activity requiring a permit under this Ordinance, either the Zoning Administrator or the Planning Commission may require the deposit of fees to be held in escrow in the name of the applicant. An escrow fee shall be required for any project with more than ten (10) dwelling units, or more than ten thousand (10,000) square feet of enclosed space, or which requires any more than twenty (20) parking spaces. An escrow fee may be requested for any other project which may, in the discretion of the Zoning Administrator or Planning Commission create an identifiable and potentially negative impact on public infrastructure or services, or on adjacent properties and because of which, professional input is desired before a decision to approve, deny or approve with conditions is made.*
- (2) The escrow shall be used to pay professional review expenses of engineers, community planners, attorneys, and any other professionals whose expertise the City Council values to review the proposed application and/or site plan of the applicant. The escrow shall also include fees for the attendance at meetings by such planners, engineers, or attorneys relating to the development proposal before the planning commission, city council, or zoning board of appeals. Professional review may result in a report to the City indicating the extent of conformance or non-conformance with this Ordinance and may identify any problems which may create a threat to public health, safety, or general welfare. Mitigation measures or alterations to a design plan may be identified where they would serve to lessen or eliminate identified impacts. The applicant will receive a copy of any professional review (except to the extent the opinion or report is subject to the attorney/client privilege) and a copy of the statement of expenses for professional services rendered.*
- (3) No application for approval for which an escrow fee is requested will be processed until the escrow fee is deposited with the City Treasurer. The amount of the escrow fee shall be established based on an estimate of the cost of the services to be rendered by the professionals contacted by the Zoning Administrator. The applicant is entitled to a refund of any unused escrow fees at the time a permit is either issued or denied in response to the applicant's request.*
- (4) If actual professional review costs exceed the amount of an escrow, the applicant shall pay the balance due prior to receipt of any Zoning Permit or other permit issued by the City in response to the applicant's request.*

The resolution that has been drafted for your consideration has been reviewed by the City Attorney, who provided some suggested changes that were incorporated.

Fee Schedule. The City's fee schedule that is currently in place was last updated in 2018 to add some fees that were previously not established. Other fee types and increases were established

and adopted by resolution in recent years, however, the fee schedule document itself was not updated. Some fees are established by ordinance and cannot change unless the ordinance is amended. Some fees are referenced by ordinance but the amount is not set in the ordinance and refers to the “fee schedule that is amended by City Council from time to time”.

Upon review of the City’s current fee schedule, we found that fees for certain application types that require the review by the Planning Commission, City Council or Zoning Board of Appeals, were well below the costs that the City typically incurs when processing them. We also found that some application types were not being assessed a fee at all, even though a high volume of those permits are being processed by staff or consultants. One example is the zoning compliance permit. These are required, per the Zoning Ordinance, for nearly every type of construction activity, from fences to large commercial buildings. A small fee for processing zoning compliance permits will generate a bit of revenue for the City to help offset the costs incurred for the review.

A draft fee schedule has been provided for your review, along with the resolution that would officially adopt it. Additionally, we have gathered fee schedules from several similar communities (by way of size, demographics, and/or physical characteristics) in West Michigan that are also included for your review. The fees that are proposed to be added or increased are in line with fee schedules that have been updated in the last few years, and are appropriate for the service provided and the cost to the City to process those applications. It is important to note that the application fees are not intended to create a “profit” for the City, rather, they are only intended to simply break even by offsetting (at least somewhat) the costs of reviewing applications. There are separate columns to show current fees and proposed fees and escrows in the draft fee schedule.

Recommendation. The City Council will consider both the escrow policy and fee schedule in separate motions as each is associated with its own resolution. Our recommendation would be for the City Council to carefully review the proposed escrow policy and fee schedule and discuss any areas where questions arise. If changes are proposed to any of the resolutions, and the City Council is inclined to adopt them, changes should be entered into the record as conditions. If the City Council will collectively need more time to review and unpack the proposed resolutions, then a tabling of one or both of the items would be appropriate.

As always, please feel free to reach out with any questions.