



## CITY of NOVI CITY COUNCIL

**Agenda Item F**  
**August 11, 2014**

**SUBJECT:** Approval of Ordinance No. 14-171.02, Chapter 2, Article VII, Section 2-210 to amend the procedure for administering payments made for review of legal documents submitted for private or individual benefit. **SECOND READING**

**SUBMITTING DEPARTMENT:** Department of Public Services, Engineering Division <sup>1710</sup>  
Community Development Department <sup>BIC</sup>

**CITY MANAGER APPROVAL:** 

### **BACKGROUND INFORMATION:**

In 2004, the City Council approved a revised ordinance and fee resolution that requires developers to deposit funds into an escrow account with the City to offset payments made to the City Attorney for the review of legal documents associated with private development projects. Based on experience over the past 10 years, staff and the City Attorney have developed some proposed revisions to the existing ordinance to improve and more accurately reflect the process that has evolved since 2004. The proposed changes are summarized below:

- Revisions to make it clear that the City will collect an estimated fee upfront to offset the City's costs for reviewing legal documents and hold it in an escrow account to pay the City Attorney for actual expenses.
- Provide for the release of all excess funds in escrow at the end of the project to make it consistent with escrow accounts used for other permits.
- Allows the City to retain excess fees in escrow under \$50, which roughly equals the cost for staff to process a refund.
- Reorganizes the section to move subsection (f) regarding additional review fees into the revised subsection (c) regarding the amount of estimated fees to be collected.
- Allows the City to set an administrative fee to offset the City's expenses in administering the escrow account.
- Authorization to deposit unclaimed funds into the General fund.

Staff and the City Attorney also reviewed the corresponding fee resolution, which establishes the initial escrow deposit made by the applicant for specific types of documents. A review of actual costs for private development legal review was used to develop the revised fee schedule. It is important to note that the fee resolution establishes the initial deposit and any funds unused by the City Attorney will be returned to the applicant at the end of the project. This will limit the number of times that the applicant is invoiced near the end of the project when legal escrow funds start to become extinguished. The net amount charged to an applicant would remain the same.

The proposed ordinance and fee resolution received a positive recommendation from the Ordinance Review Committee on July 7, 2014 (minutes attached).

Additional background is provided in the attached memo from staff and letter from the City Attorney.

**RECOMMENDED ACTION:** Approval of Ordinance No. 14-171.02, Chapter 2, Article VII, Section 2-210 to amend the procedure for administering payments made for review of legal documents submitted for private or individual benefit.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 14-171.02

AN ORDINANCE TO AMEND CHAPTER 2, ARTICLE VII, SECTION 2-210 TO AMEND THE PROCEDURE FOR ADMINISTERING PAYMENTS MADE FOR REVIEW OF LEGAL DOCUMENTS SUBMITTED FOR PRIVATE OR INDIVIDUAL BENEFIT

The City of Novi Ordains:

PART I.

Chapter 2, "Administration," Article VII, "Review Expense Reimbursements," ~~Section 2-210~~ is hereby ~~amended to read~~ renamed as follows:

Article VII. – LEGAL REVIEW EXPENSE REIMBURSEMENTS

PART II.

~~Chapter 2, "Administration," Article VII, "Review Expense Reimbursements," Section 2-210~~ is hereby amended to read as follows

Sec. 2-210. Private payment of review expenses.

- (a) *Rationale and purpose.* When individuals and entities seek ~~Legal reviews~~ legal reviews and approvals for their private and individual benefit, depending upon the type of review and/or approval involved, substantial costs and expenses may be incurred by the city for the work of the city attorney and staff in determining whether approvals should be granted, and whether and the extent any conditions should be imposed. Therefore, it is the purpose of this section to protect the taxpayers of the city against the allocation of substantial sums of general fund moneys that would otherwise be expended for the singular benefit of the private individuals and entities seeking the reviews and approvals. It is the policy of the city to secure payment for such reviews from the persons and entities seeking the special and singular benefit therefrom.

- (b) *General requirement and obligation.* In circumstances in which the city is requested for an authorization, permission, permit selection of one person or entity over others, or other approval reasonably requiring a review by the city attorney, the person or entity making the request for authorization, permission, selection or approval, shall be obligated to advance the monies for such review.
- (c) Amount of ~~estimated payment required as fixed~~ fee. The amount of money required to be ~~paid as a fixed fee paid into escrow~~ under this section shall be reasonably related to the amount of costs and expenses estimated by the city and its consultants to complete the respective legal review, as periodically determined by the city. For purposes of administering this section, the city council shall adopt one or more resolutions setting the ~~fixed~~ amount of fees to be ~~paid~~ submitted into escrow, in advance, by applicants seeking relief contemplating city review. The amount so established shall be based upon the amount reasonably estimated to be required to cover the anticipated fees, costs and expenses to be incurred in the legal review. The city attorney shall keep time records showing the work performed on each review, and the amount charged for such purposes, and, if the amount estimated for any review under this subsections becomes, or is likely to become insufficient to cover the full amount of fees and costs of review, the city attorney shall estimate the additional amount of escrow needed, and the city shall thereafter, invoice the applicant, and the applicant shall pay, additional amounts into escrow, as reasonably needed to proceed with and complete the review. The amount of additional payments required to be paid into escrow shall be based upon an estimate of the sum required to cover the anticipated costs and expenses to be incurred to complete the review. The city attorney ~~Work on the review shall be suspend further review work~~ until the additional payment has been escrowed. Upon receipt of the full amount of such additional escrow payment, the city shall send written notice of such receipt to the city attorney. The resolution setting escrow fee amounts shall include an additional amount to be assessed as a fixed fee to pay the city's expenses in administering the ~~the~~ escrow account.
- (d) Excess fees in escrow. To the extent such an escrow exceeds the actual cost and expense of the review, as ultimately determined, the excess shall be returned to the person or entity that posted the escrow, except that if the excess fees in escrow amounts to less than \$50, the funds shall be deposited in the general fund of the city. If the excess fees are sent by mail to the applicant at the address specified on the escrow receipt, and is returned undelivered, it shall be held by the city and returned to the applicant on demand; however, if such demand is not made within one

(1) year after it was returned undeliverable, the remaining escrow shall be deemed forfeited and shall be deposited in the general fund of the city. If the excess fees in escrow amounts to less than \$50, the funds shall be deposited in the general fund of the city.

(~~ed~~) *Fee amount if not stated in resolution.* In the event a specific fixed fee amount has not been determined and specified by resolution for a particular purpose, the city attorney shall estimate an amount to be placed in escrow with the city, in advance of the review(s) being conducted.

(~~fe~~) *Collection and notice.* ~~The finance department shall collect the amounts as provided under subsections (c) and (ed), above, and send the city attorney written notice of the receipt of the full amount of the escrowed funds in respect to each review.~~ Collection of fees, as provided in subsections (c) and (e), above, will be recorded in the City of Novi general ledger. Written notice of fees collected will be provided to the city attorney. Upon receipt of such notice, the city attorney may then commence the review.

(~~f~~) *Additional review and escrow.* ~~The city attorney shall keep time records showing the work performed on each review, and the amount charged for such purposes, and, if the amount estimated for any review under subsections (c) and/or (d), above, has been, or is likely to be insufficient to cover the full amount of fees and costs of review, the city attorney shall forward to the city his or her time records, and an estimated additional amount of escrow needed, and the city finance director shall thereafter, from time to time, as requested in such estimate, invoice the applicant, and the applicant shall pay, additional amounts into escrow, as reasonably needed to proceed with and complete the review. The amount of additional payments required to be paid into escrow shall be based upon an estimate of the sum required to cover the anticipated costs and expenses to be incurred to complete the review. Work on the review shall be suspended until the additional payment has been escrowed. Upon receipt of the full amount of such additional escrow payment, the finance department shall send written notice of such receipt to the city attorney. To the extent such an escrow exceeds the actual cost and expense of the review, as ultimately determined, the excess shall be returned to the person or entity that posted the escrow. If the city cannot locate such person or entity at the last known address, the excess escrow monies shall be disbursed as otherwise provided by law or ordinance.~~

- (g) *Periodic billings for services performed on reviews.* The city attorney shall transmit periodic billings to the city with regard to services performed on reviews to be paid as provided in this article, consistent with the city attorneys agreement with the city for billing purposes in general, and the city council shall review and authorize, and the finance department shall pay, progress payments to the city attorney in accordance with such billings.
  
- (h) *Qualifications for waiver.* If a person does not have adequate funds to pay for the review, as required under this section, the fees will be waived upon the filing of the following prior to the commencement of city review: (1) an affidavit stating that the applicant is an indigent, and specifying under oath that such person does not have adequate real or personal property to pay or secure all or any part of the funds; and (2) such reasonable supporting documentation as may be requested by the city. In such event, the city shall pay the review fees to the city attorney out of general fund moneys, or from such other source as the city council shall determine.

| **Part III.**

**Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

| **PART #VI.**

**Severability.** Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

| **PART IV.**

**Effective Date: Publication.** The provisions of this ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this ordinance and such other facts as the Clerk shall deem pertinent and that a copy of the ordinance is available for public use and inspection at the office of the City Clerk.

Made, Passed and Adopted by the Novi City Council this \_\_\_\_ day of \_\_\_\_\_, 2014.

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Robert J. Gatt, Mayor

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Maryanne Cornelius, City Clerk

**Certificate of Adoption**

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2014.

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Maryanne Cornelius, City Clerk

Adopted:  
Published:  
Effective:



STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI  
ORDINANCE NO. 14-171.02

AN ORDINANCE TO AMEND CHAPTER 2, ARTICLE VII,  
SECTION 2-210 TO AMEND THE PROCEDURE FOR  
ADMINISTERING PAYMENTS MADE FOR REVIEW OF LEGAL  
DOCUMENTS SUBMITTED FOR PRIVATE OR INDIVIDUAL  
BENEFIT

The City of Novi Ordains:

**PART I.**

Chapter 2, "Administration," Article VII, "Review Expense Reimbursements," is hereby renamed as follows:

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**PART II.**

Chapter 2, "Administration," Article VII, "Review Expense Reimbursements," Section 2-210 is hereby amended to read as follows

Sec. 2-210. Private payment of review expenses.

- (a) *Rationale and purpose.* When individuals and entities seek legal reviews and approvals for their private and individual benefit, depending upon the type of review and/or approval involved, substantial costs and expenses may be incurred by the city for the work of the city attorney and staff in determining whether approvals should be granted, and whether and the extent any conditions should be imposed. Therefore, it is the purpose of this section to protect the taxpayers of the city against the allocation of substantial sums of general fund moneys that would otherwise be expended for the singular benefit of the private individuals and entities seeking the reviews and approvals. It is the policy of the city to secure payment for such reviews from the persons and entities seeking the special and singular benefit therefrom.

- (b) *General requirement and obligation.* In circumstances in which the city is requested for an authorization, permission, permit selection of one person or entity over others, or other approval reasonably requiring a review by the city attorney, the person or entity making the request for authorization, permission, selection or approval, shall be obligated to advance the monies for such review.
- (c) *Amount of estimated fee.* The amount of money required to be paid into escrow under this section shall be reasonably related to the amount of costs and expenses estimated by the city and its consultants to complete the respective legal review, as periodically determined by the city. For purposes of administering this section, the city council shall adopt one or more resolutions setting the amount of fees to be submitted into escrow, in advance, by applicants seeking relief contemplating city review. The amount so established shall be based upon the amount reasonably estimated to be required to cover the anticipated fees, costs and expenses to be incurred in the legal review. The city attorney shall keep time records showing the work performed on each review, and the amount charged for such purposes, and, if the amount estimated for any review under this subsections becomes, or is likely to become insufficient to cover the full amount of fees and costs of review, the city attorney shall estimate the additional amount of escrow needed, and the city shall thereafter, invoice the applicant, and the applicant shall pay, additional amounts into escrow, as reasonably needed to proceed with and complete the review. The amount of additional payments required to be paid into escrow shall be based upon an estimate of the sum required to cover the anticipated costs and expenses to be incurred to complete the review. The city attorney shall suspend further review until the additional payment has been escrowed. Upon receipt of the full amount of such additional escrow payment, the city shall send written notice of such receipt to the city attorney. The resolution setting escrow fee amounts shall include an amount to be assessed as a fixed fee to pay the city's expenses in administering the escrow account.
- (d) *Excess fees in escrow.* To the extent such an escrow exceeds the actual cost and expense of the review, as ultimately determined, the excess shall be returned to the person or entity that posted the escrow, except that if the excess fees in escrow amounts to less than \$50, the funds shall be deposited in the general fund of the city. If the excess fees are sent by mail to the applicant at the address specified on the escrow receipt, and is returned undelivered, it shall be held by the city and returned to the applicant on demand; however, if such demand is not made within one (1) year after it was returned undeliverable, the remaining escrow shall be deemed forfeited and shall be deposited in the general fund of the city.

- (e) *Fee amount if not stated in resolution.* In the event a specific fixed fee amount has not been determined and specified by resolution for a particular purpose, the city attorney shall estimate an amount to be placed in escrow with the city, in advance of the review(s) being conducted.
- (f) *Collection and notice.* Collection of fees, as provided in subsections (c) and (e), above, will be recorded in the City of Novi general ledger. Written notice of fees collected will be provided to the city attorney. Upon receipt of such notice, the city attorney may then commence the review.
- (g) *Periodic billings for services performed on reviews.* The city attorney shall transmit periodic billings to the city with regard to services performed on reviews to be paid as provided in this article, consistent with the city attorneys agreement with the city for billing purposes in general, and the city council shall review and authorize, and the finance department shall pay, progress payments to the city attorney in accordance with such billings.
- (h) *Qualifications for waiver.* If a person does not have adequate funds to pay for the review, as required under this section, the fees will be waived upon the filing of the following prior to the commencement of city review: (1) an affidavit stating that the applicant is an indigent, and specifying under oath that such person does not have adequate real or personal property to pay or secure all or any part of the funds; and (2) such reasonable supporting documentation as may be requested by the city. In such event, the city shall pay the review fees to the city attorney out of general fund moneys, or from such other source as the city council shall determine.

### **Part III.**

**Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

### **PART VI.**

**Severability.** Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

**PART V.**

**Effective Date: Publication.** The provisions of this ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this ordinance and such other facts as the Clerk shall deem pertinent and that a copy of the ordinance is available for public use and inspection at the office of the City Clerk.

Made, Passed and Adopted by the Novi City Council this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Robert J. Gatt, Mayor

\_\_\_\_\_  
Maryanne Cornelius, City Clerk

**Certificate of Adoption**

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2014.

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Maryanne Cornelius, City Clerk

Adopted:  
Published:  
Effective:

**ORDINANCE REVIEW COMMITTEE**  
**July 7, 2014 | 5:00 p.m.**  
**Mayor's Conference Room | Novi Civic Center | 45175 Ten Mile Road**

Mayor Gatt called the meeting to order at 5:00 p.m.

**ROLL CALL:** Mayor Gatt, Council Member Mutch, Council Member Wrobel

**ALSO PRESENT:** Victor Cardenas, Assistant City Manager  
Charles Boulard, Community Development Director  
Brian Coburn, Engineering Manager  
Thomas Schultz, City Attorney

**APPROVAL OF AGENDA:** Agenda was unanimously approved as presented.

**AUDIENCE COMMENT:** None

**MATTERS FOR DISCUSSION:**

**1. Arcade license requirements**

Mr. Schultz began the discussion by explaining the Committee had held some discussion on the topic at the previous meeting and it came down to whether or not they wanted to continue issuing Arcade Licenses. The proposed ordinance change removes the licensing process, which would mean no fee and no license. The question before the Committee is whether they want to leave in Division I which covers operational requirements, or strike the whole ordinance.

Member Mutch questioned if all of the businesses that currently hold an Arcade License also hold a liquor license. There is only one that does not hold a liquor license. He wanted to confirm that all of those businesses would be covered by other types of inspections if the Arcade Ordinance was removed as a whole. Mr. Schultz said Public Safety might have some input on whether to remove Division I. The Committee decided to bring back the item at the next meeting to see a strikethrough version of the ordinance amendment that shows the entire Article III removed.

**2. Removal of Massage Therapist Permit references within the ordinance**

Mr. Schultz began the discussion by explaining the State had taken over issuing Massage Therapist Licenses and actually prohibits the City from issuing a permit. He said that the City can still regulate and enforce the Business License section of the ordinance. He added the proposed ordinance change would be consistent with state law.

**ORCM 14-07-01 Moved by Mutch, seconded by Wrobel; CARRIED UNANIMOUSLY:**

**To positively recommend to City Council the ordinance amendment to Chapter 20 regarding the removal of Massage Therapist references within the chapter.**

### 3. Potential revisions to the legal fee reimbursement ordinance

Mr. Schultz explained that the City has had an escrow ordinance in place to offset the costs of having the City Attorney review legal documents. He said the fees and ordinance have been reviewed by the Community Development Department, Finance Department and Public Services and they have come forth with proposed changes. Mainly it will provide a better way to estimate the actual costs of legal review, provide for the release of funds if there are excess funds at the end of a project, and streamline the process.

Mayor Gatt asked if the point of updating the fees was to create a gain, loss or to breakeven. Mr. Coburn explained it was really to recoup the actual costs, so mainly to breakeven. Mayor Gatt asked what the point of the City retaining excess fees in the escrow account under \$50 was. Mr. Coburn explained the actual cost to refund the money amounted to approximately \$50.

**ORCM 14-07-02 Moved by Mutch, seconded by Wrobel; CARRIED UNANIMOUSLY:**

**To positively recommend to City Council the ordinance amendment regarding the legal review expense reimbursements ordinance and fee schedule to reimburse the City for legal review expenses.**

### 4. Possible Ordinance Amendments regarding Medical Marijuana

Mr. Schultz explained that his memo covered the developments in law regarding the Michigan Medical Marijuana Act and the various ways other communities have addressed the topic. He added that the City cannot prohibit medical marijuana uses, but there is the possibility that the City can regulate such uses. Currently the Zoning Ordinance has a provision that applies in the event of an "unlisted use", meaning that unless a use is specifically permitted in a given district, it shall be prohibited in that district. The Planning Department can then recommend which district an "unlisted use" may be appropriate within and refer it to the Planning Commission, followed by City Council. Mr. Schultz said there were basically three options for the Committee to discuss. First, they could leave the process as just described, requiring an individual to obtain special land use under the unlisted use provision. Second, it could treat medical marijuana uses like other adult regulated uses, and pick a location within the City, by zoning district, where such uses could be located, and create regulations. Third, the City could approach the issue similar to what Farmington Hills has done, and attempt to preclude any sort of commercial scale operation by not providing for those uses and providing instead only for a medical marijuana caregiver as an accessory use to a single-family home, subject to certain regulations.

Member Mutch asked if an individual who holds a medical marijuana card has a right to grow 12 plants for themselves. Mr. Schultz said that was correct. Member Mutch clarified that a caregiver was allowed their own 12 plants if they held a medical marijuana card, plus 12 plants for each of their five patients, totaling 72 plants.

Mr. Schultz pointed out that the Farmington Hills approach meant it would be allowed in residential areas, and would not require any type of permit or even inspection by the City. It would be treated as a home occupation meaning no signage would be allowed.

Member Mutch said his concern was not about warehouses, but the caregivers. He thought they should identify areas within the City that they might consider it an allowable use under the zoning ordinance. He thought it would be beneficial to designate the locations now and still require an individual to go through the special land use process.

Mayor Gatt said he thought the Farmington Hills approach was interesting, but did not like the thought of it being allowed in a residential area. Member Wrobel agreed. Mr. Schultz said he could bring forth examples from other communities so they can see more specifically what those communities are doing. Mayor Gatt also requested to view the minutes of the Farmington Hills City Council when this topic was discussed.

- 5. Review of Ordinance Amendments referred to Council**
  - a. Temporary Signs Ordinance Amendment**
  - b. Right of Way Obstructions Ordinance Amendment**

Mayor Gatt said the Committee would discuss item 5 at the next meeting due to time constraints.

The meeting was adjourned at 5:42 p.m.

Recorded by: Cortney Hanson  
Deputy City Clerk



# MEMORANDUM



**TO:** ROB HAYES, P.E.; DIRECTOR OF PUBLIC SERVICES  
**FROM:** BRIAN COBURN, P.E.; ENGINEERING MANAGER *BIC*  
**SUBJECT:** PRIVATE DEVELOPMENT LEGAL REVIEW REVISIONS  
**DATE:** JUNE 17, 2014

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There are several legal documents associated with each site plan submittal that require review by the City Attorney. These legal documents include development agreements, water main easements, and street dedications to name just a few. Sections 2-210 and 2-211 of the Novi Code of Ordinances require the developer to deposit funds into an escrow account with the City to offset payments made to the City Attorney for review of legal documents associated with private development projects. The ordinance and the corresponding fee schedule were last reviewed in 2004.

## **Proposed Ordinance Revisions**

Staff from Community Development, Finance and Public Services have met to discuss the existing process, ordinance and fee resolution, and have proposed some changes to the ordinance to improve and more accurately reflect the process that has evolved since 2004. These proposed changes are summarized below:

- Revisions to make it clear that the City will collect an estimated fee upfront to offset the City's costs for reviewing legal documents and hold it in an escrow account to pay the City Attorney for actual expenses.
- Provide for the release of all excess funds in escrow at the end of the project to make it consistent with escrow accounts used for other permits.
- Allows the City to retain excess fees in escrow under \$50, which roughly equals the cost for staff to process a refund.
- Reorganizes the section to move subsection (f) regarding additional review fees into the revised subsection (c) regarding the amount of estimated fees to be collected.
- Allows the City to set an administrative fee to offset the City's expenses in administering the escrow account.

The existing ordinance specified that the original deposit was a fixed fee from which the City would pay the City Attorney, with the remainder to be retained by the City upon completion. If there were additional funds required for the City Attorney to complete the review, the developer was required to make an additional deposit. Any excess funds from the additional deposit were refundable to the applicant. The existing ordinance did not specify an administrative fee and instead relied on the fixed fee concept to offset the City's costs.

The proposed revisions simplify the ordinance to create one category within the escrow account rather than delineating between the fixed fee component and the additional fees component to determine which portion is refundable. The formal implementation of an

administrative fee will be more equitable to the City in terms of offsetting administrative costs associated with the legal escrow accounts.

The revised ordinance contemplates that the developer deposit an escrow amount with the City and that the City Attorney would be paid by the City for the actual fee incurred for the review, with any remaining balance to be returned to the developer upon project completion. The revised ordinance also states the City will collect additional funds from the developer if there are insufficient funds in the escrow for remaining work by the City Attorney. The proposed changes to the ordinance are enclosed for your reference with a redlined version to show the specific revisions.

### **Fee Resolution**

In 2004, at the same time as the adoption of the ordinance regarding legal review fees, the City adopted a fee schedule as the basis for calculating the amount of the escrow deposit by the developer.

As the intensity of development has increased over the past year or so, it has become apparent that the 10-year old fee schedule should be revised to reflect the current attorney fees. Staff has noted that the majority of recent projects have extinguished legal escrow balances prior to completion of the project. According to the current ordinance, the City Attorney is supposed to halt all reviews when the escrow balance reaches zero until staff invoices the developer and additional escrow funds are deposited. Unfortunately, much of the review by the City Attorney occurs just before the developer receives a temporary certificate of occupancy for commercial/industrial developments or first building permit for residential site developments, and this can cause major delays for the developer. This situation was contemplated as a rare occurrence under the existing fee resolution, but has increased in frequency and has resulted in unnecessary work for staff and headaches for developers near the end of a project.

Staff met with the City Attorney and requested a review of actual costs for private development legal review for several project types over the past couple of years. As a result, a proposed revision to the fee resolution was developed to establish a more realistic escrow deposit amount from developers for each of the various types of legal document. The intent would be to refund excess escrow funds in most cases and only require additional invoices in extreme situations when there are multiple reviews or complicating issues. Meanwhile, staff is working with the City Attorney to identify when additional escrow funds may be needed earlier in the process. The attached letter from the Beth Saarela provides additional explanation of the revised escrow deposit targets. It should be noted that while the proposed fee resolution increases the initial deposit made by the developer, the net amount paid to the City Attorney from the escrow posted by the developer will be the same based on the actual costs incurred by the City Attorney. The fee resolution also incorporates the administrative fee as 15% of the escrow deposit, which is consistent with the other types of reviews and permits issued by Community Development.

We will work with the Interim City Manager to prepare the fee resolution and revised ordinance for consideration by the Ordinance Review Committee.

cc: Charles Boulard, Community Development Director  
Carl Johnson, Chief Financial Officer  
Barb McBeth, Deputy Director Community Development  
DPS Engineering Staff



JOHNSON ROSATI SCHULTZ JOPPICH PC

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Elizabeth Kudla Saarela  
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June 18, 2014

Brian Coburn, Engineering Manager  
Public Services – DPW Garage  
26300 Delwal Drive  
Novi, MI 48375

**RE: *Amendment to Legal Review Expense Reimbursements Ordinance and Resolution Establishing Amended Fee Schedule to Reimburse the City for Legal Review Expenses***

Dear Mr. Coburn:

Pursuant to our May 5, 2014 meeting with Engineering, Community Development and Finance to improve the process for collection, review and processing of legal review escrow fees and accounts, we are enclosing redlined and clean versions of the Resolution Establishing Amended Fee Schedule to Reimburse the City. The initial schedule was established in 2003 and has not been updated since its adoption.

In order to eliminate or reduce the need to replenish individual developer escrow accounts during the course of a project, we have reviewed two-years of historical billing records for development projects including various types of legal reviews, including but not limited to master deed reviews, completion agreements, conservation easements, and utility and street acceptance documents. The enclosed Resolution Establishing Amended Fee Schedule to Reimburse the City includes a revised estimated schedule of fees based on historical averages for various types of document review, preparation and revision for development projects occurring since 2012.

We have eliminated certain categories of escrow fees that we have not been asked to review, revise or prepare for any specific types of documents with any regularity, including site plan reviews, Zoning Ordinance Map Amendments, and Master Plan Amendments. In the event that a category is not included in the Resolution, but an unusual type of review or document preparation is necessary for any project or development, Section 2-210 (d) of the Ordinance Code allows City staff to provide an estimated fee amount to the applicant for the particular document.

We have also added categories for certain types of documents that occur with regularity and either were not required by ordinance in 2003, or that required clarification based on our review of historical billing records. Specifically, a category has been added for "completion agreements," which are required by Chapter 26.5 of the Ordinance Code as adopted in 2004. We have updated the fee that has been estimated by City staff for completion agreements to be more consistent with the historical billing records.

Additionally, we have clarified that *amendments* of Development Agreements, Master Deeds and/or Subdivision Declarations do not require the submittal of a fee equivalent to the initial fee submitted for review or preparation of the original Development Agreement or Master Deed for a project as they generally do not require as extensive review of background materials as the original documents required.

It should be noted that when City staff applies the fee schedule to projects involving more than one parcel of property, or that require off-site easement to be provide, a separate fee should be applied to documents for separate parcel. For example, if a project has an on-site water system easement and an off-site water system easement, two separate fees for utility review for acceptance of dedication should be submitted since two separate legal analyses must be completed with respect to property ownership.

Though the enclosed Resolution Establishing Amended Fee Schedule to Reimburse the City establishes fees are closely aligned with billing records, as indicated in the ordinance, the established amounts are still estimates. Circumstances and complication vary on a project by project basis and will still result in the need to refund and/or collect more fees for particular projects. However, it is our hope and intent that with the adoption of the revised fee schedule, City staff can spend less time pursuing additional fees from developers during the course of a development, and the need to expend time reviewing the status of escrow accounts during a legal review can be reduced.

Finally, it has been the City's practice to release remaining escrow fees to the applicant once the review has been completed and the documents have been finalized. The City has been collecting an additional administrative fee to cover the City's cost to collect, administer and refund escrow balances at the end of a project. It was recently noted that the current ordinance language provides for a refund of remaining fees only in the event that the amount for review exceeded the original fees posted and additional fees were collected. Though many projects exceed the original escrow amounts due to the number of revisions required to documents submitted, other projects end up with significant amounts of unused escrow fees because they are able to complete a submittal with relatively few errors. Additionally, a detailed review of the file by City administration would be required in order to determined whether the fees remaining resulted from the deposit of additional fees as provided under the current ordinance. On this basis, after a review of historical records, the City proposes to refund significant escrow fees remaining once the project has been completed. Any amount under \$50 will not be refunded.

In addition to the above changes, the following additional minor modifications have been proposed:

Brian Coburn, Engineering Manager

June 18, 2014

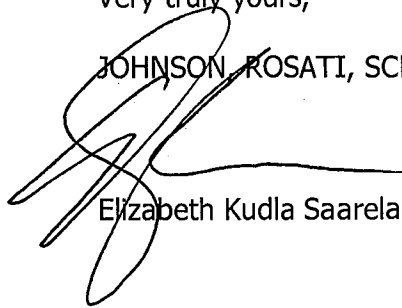
Page 3

- The Article has been renamed "Legal" Review Expense Reimbursements to clarify its applicability;
- Authorization to collect the non-refundable administrative fee has been added; and,
- Authorization to deposit unclaimed funds into the General Fund has been provided.

If you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



Elizabeth Kudla Saarela

EKS/sls

Enclosure

- C: Maryanne Cornelius, Clerk (w/Enclosure)  
Victor Cardenas, Interim City Manager (w/Enclosure)  
Charles Boulard, Community Development Director (w/Enclosure)  
Rob Hayes, DPS Director (w/Enclosure)  
Carl Johnson, Finance Director / Chief Financial Officer (w/Enclosure)  
Thomas R. Schultz, Esquire (w/Enclosure)