



Rules Committee Staff Reports

File #: 18-178, Version: 1

Staff Report Regarding Discussion of Modifying Existing Planning Appeal Fees

SUMMARY AND RECOMMENDATIONS

Appeal fees for planning cases are a direct cost, deposit-based fee that reimburses the City for hourly staff/administrative processing costs. The deposit amount is set at the average cost of processing an appeal. Staff recommends the Rules Committee review the existing Planning appeal fees and their justifications and provide guidance on staff's recommended modifications to them for consideration in the FY18-19 City Master Fee Schedule.

BACKGROUND

In consideration of public concerns expressed during the recent Parrott Street Apartments appeal on March 19, 2018 (APL18-001), the City Council directed the Rules Committee to review the cost of filing an appeal. Appeal fees are a direct cost where the appellant pays a deposit from which the City deducts the hourly cost of processing. Following the outcome of the decision, the appellant either receives a refund of the remaining balance or a bill if an outstanding amount is still required. The Planning Division typically processes three or four appeals each year. Most appeals are filed by applicants seeking to modify a condition of approval for a previously approved project, neighbors who object to an approved project, or persons seeking to challenge a provision or interpretation of the Zoning Code.

Appeal fees are identified within the City's Master Fee Schedule, which is annually reviewed and approved by the City Council in the spring as part of the budget process. Adjustments to the fee schedule are also possible at other times. The current fee schedule requires a \$5,300 deposit to file an appeal, including a non-refundable 6% technology fee applied to all applications. Appeals heard by the City Council pay an additional non-refundable \$534 filing fee to the City Clerk.

The methodology and software currently used by Planning staff to track their time allows applicants and appellants to obtain up-to-date and accurate information regarding the status of their deposit balance as well as task summaries to account for each hour spent processing. The current deposit-based method recoups staffing costs plus overhead, but costs related to internal legal counsel from the City Attorney or the attendance of independent legal counsel during an appeal to the City Council are not recovered.

In 2016, ClearSource Financial Consulting conducted a cost of service analysis and fee study for the Community Development Department that examined the time and staffing costs involved with processing different types of applications. The study's goal was to simplify and facilitate an accurate application of fees. The study recommended a number of changes to the Department's fees, which were reduced or increased accordingly. The appeal deposit was recommended to be increased from \$2,000 to \$5,000 in order to more accurately reflect the average cost of processing. The study's

recommendation was influenced by a number of prior appeals that required substantial staff time to process and had exceeded their deposited amount. The City Council adopted this updated appeal fee in the FY 17-18 Master Fee Schedule.

Analysis

Current City policy is to attempt cost recovery for discretionary planning applications (those requiring a public hearing), including appeals. Establishing a reasonable and proportionate appeal fee is challenging since the cost of processing appeals can vary widely. A number of prior appeals in recent years, such as a contested solar wind turbine proposed near Heron Bay, a Site Plan Review for Greenhouse Marketplace and an interpretation on electric fences, required a significant amount of staff time to process and had inadequately recovered costs, prompting an increase in the recommended deposit amount following the outcome of the prior fee study.

Deducting an hourly rate from a set deposit has shown to be an equitable method for processing an appeal. The concern from the public and the City Council understandably is that a higher deposit amount can be prohibitively expensive for a concerned resident with limited financial resources to challenge a decision. The benefits of averaging the appeal deposit using the current method is that it reduces or eliminates the balance due after a Council decision is made, since a losing appellant may have little incentive to pay an outstanding balance, and a higher appeal fee generally discourages frivolous requests.

Staff recommends the Rules Committee reduce the deposit fee established by the prior fee study by half, to \$2,500. This amount is more closely aligned with the amount established prior to the fee study (see attached table "City Appeal Fees by Fiscal Year"). Staff does not recommend eliminating the established direct-cost deposit method for a fixed fee. The recommendation of the Rules Committee will be forwarded for City Council consideration with the upcoming annual Master Fee Schedule update.

Previous Actions

The current fee schedule was presented to the City Council on March 6, 2017 and approved on May 1, 2017 under Resolution 2017-060.

Legal Analysis

California Government Code enables cities to defray the cost of processing applications so long as the fees are reasonable and proportionate to the costs incurred.

Fiscal Impacts

Modifying or reducing the deposit for an appeal would not have a discernable fiscal impact. Establishing a fixed fee could have a fiscal impact if the fee does not cover the cost of services provided.

ATTACHMENTS

- City Appeal Fees by Fiscal Year
- Current Appeal Fees by City in Alameda County

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Rules Committee Staff Reports

File #: 18-308, Version: 1

Staff Report to Follow-Up Committee's Previous Discussion of Planning Appeal Fees

SUMMARY AND RECOMMENDATIONS

Planning appeal fees are currently structured as direct cost, deposit-based fees that reimburse the City for hourly administrative processing costs. Following comments from the City Council's Rules Committee at its April 23, 2018 meeting, staff recommends the Appeal fee for non-applicants be modified to a \$500 fixed fee. As per the Rules Committee's consensus reached at its April 23rd meeting, the appeal fee for applicants would be reduced by half to a \$2,500 deposit. Staff recommends that the Rules Committee forward this proposal for further City Council consideration.

BACKGROUND

Following public concerns expressed during the Parrott Street Apartments appeal on March 19, 2018 (APL18-001), the City Council directed the Rules Committee to review the cost of filing an appeal. The City Council's Rules Committee met to discuss appeal fees for planning projects at its April 23, 2018 meeting. At the meeting, staff recommended reducing the current appeal fee deposit by half from \$5,000 to \$2,500. The members agreed with staff's recommended deposit for applicants but felt that there should be a separate, reduced fixed fee for non-applicants. The Rules Committee directed staff to return with a proposal for a reasonable fixed fee for non-applicants.

The current appeal fee requires a \$5,300 deposit to file an appeal, including a non-refundable 6% technology fee applied to all applications. Appeals heard by the City Council pay an additional non-refundable \$534 filing fee to the City Clerk.

Appeal fees are currently a direct cost where the appellant pays a deposit from which the City deducts its hourly costs of processing the appeal for review and decision by the respective appeal hearing body. Following the outcome of a hearing body's decision, the appellant either receives a refund of the remaining balance or a bill if an outstanding amount is still required. Appeal fees are identified within the City's Master Fee Schedule, which is reviewed and approved by the City Council annually as part of the budget process. Although the Master Fee Schedule for FY 2018-19 was considered and approved by the City Council on May 7, 2018, adjustments to the fee schedule may be made at other times during the fiscal year. The recently approved FY 2018-19 Appeal fees reflect the FY 2017-18 Appeal fees plus the applicable Consumer Price Index adjustment.

Analysis

Current City policy is to attempt cost recovery for discretionary planning applications (those requiring a public hearing), including appeals. Establishing a reasonable and proportionate appeal fee is challenging since the cost of processing appeals can vary widely. Appeals generally require a significant amount of staff time to process and other costs such as legal counsel are not reimbursed.

On April 23rd, the City Council Rules Committee reached consensus on a recommendation to the City Council to reduce the appeal deposit fee for applicants by half, to \$2,500. The Rules Committee was in agreement that a separate fixed fee should be established for non-applicants, but was not able to reach consensus on an appropriate amount. Based on the Committee's comments and historical trends, staff recommends establishing a fixed appeal fee for non-applicants of \$500, which is consistent with what was charged by the City approximately ten years ago. This amount should discourage frivolous appeals, but any deviation from a deposit-based method would require the City to assume nearly the full cost of processing the appeal, regardless of merit.

Staff considered a suggestion made by Councilmember Thomas to charge a different appeal fee for residents and non-residents, but upon further review is unable to recommend this method due to legal concerns and the complexity of determining residency for those appeals filed by business entities.

The outcome of this proposal would result in the following appeal fees being established in the Master Fee Schedule (including the 6% non-refundable technology fee and \$534 City Clerk's filing fee for those items heard by the City Council):

Non-Applicant Appeal (Fixed Fee)

To the Board of Zoning Adjustments or Planning Commission: \$500

To the City Council: \$1,034 (\$500 + \$534 City Clerk Appeals Fee)

Applicant Appeal (Deposit)

To the Board of Zoning Adjustments or Planning Commission: \$2,500

To the City Council: \$3,034 (\$2,500 + \$534 City Clerk Appeals Fee)

Previous Actions

The current fee schedule was approved on May 1, 2017 under Resolution 2017-060. The new fee schedule for fiscal year 2018-19 was approved on May 7, 2018 under Resolution 2018-034.

Legal Analysis

California Government Code enables cities to defray the cost of processing applications so long as the fees are reasonable and proportionate to the costs incurred.

Fiscal Impacts

Modifying or reducing the deposit for appeals filed by applicants will not have a fiscal impact. Establishing a reduced \$500 fixed fee for non-applicants will require the General Fund to absorb the remainder of any staffing and processing costs incurred. A 2016 fee study conducted by ClearSource Financial Consulting estimated the Planning division's average cost of services to process an appeal was \$12,408. This estimate did not include costs incurred by other departments, legal counsel, or

public notification.

ATTACHMENTS

- Rules Committee Staff Report and Attachments from April 23, 2018

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