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**Title:** Staff Report for a City of San Leandro City Council Resolution to Amend Title 6, Chapter 4 of the San Leandro Administrative Code to adjust the Community Development Department Planning Division Appeal Fees

**Sponsors:** Tom Liao

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**Attachments:** 1. Rules Committee Staff Reports 18-178 and 18-308, 2. City Appeal Fees by Fiscal Year, 3. Current Appeal Fees by City

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Staff Report for a City of San Leandro City Council Resolution to Amend Title 6, Chapter 4 of the San Leandro Administrative Code to adjust the Community Development Department Planning Division Appeal Fees

**SUMMARY AND RECOMMENDATIONS**

Planning appeal fees are structured as direct cost, deposit-based fees that reimburse the City for hourly administrative processing costs. The City Council Rules Committee recommends that the City Council adopt a Resolution to reduce the appeal fee to a \$2,500 deposit for applicants and a fixed \$500 fee for non-applicants.

**BACKGROUND AND DISCUSSION**

Following public concerns expressed during the Parrott Street Apartments appeal on March 19, 2018 (APL18-001), the City Council referred review to the City Council Rules Committee of the costs to file an appeal. The Rules Committee met to discuss appeal fees for planning projects at its April 23 and June 25, 2018 meetings. Following deliberations, the Rules Committee recommended reducing the deposit amount for applicants by half and re-establishing a separate, reduced fixed fee of \$500 for non-applicants.

Appeal fees are charged at direct cost and 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 there is an outstanding amount. In the instance of Parrott Street Apartments (APL18-001), the appellant received a refund of \$2,269.33 from the City and is reported to have refused an offer by the applicant, Eden Housing, to be reimbursed for the cost of the appeal.

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.

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 an appeal. The study's recommendation was influenced by a number of prior appeals that required substantial staff time to process. The City Council adopted this update in the FY 17-18 Master Fee Schedule on May 1, 2017.

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 and codified in Section 6.4.110 of the City's Administrative Code. The current 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 by resolution at other times during the fiscal year. The recommended adjustment herein is prospective, and not retroactive, as drafted. Fees are adjusted annually based on the applicable Consumer Price Index.

### **Proposed Adjustment to the Fee Schedule**

The attached Resolution would establish the following appeal fees in the Master Fee Schedule (excluding a separate 6% non-refundable technology fee and a \$534 City Clerk's filing fee for those items heard by the City Council):

Appeal to Official/Commission Other than City Council:

If appellant is applicant: Direct Costs, \$2,500 deposit  
If appellant is not applicant: \$500 fixed fee

Appeal to City Council (Add'l City Clerk Filing Fees Apply):

If appellant is applicant: Direct Costs, \$2,500 deposit  
If appellant is not applicant: \$500 fixed fee

### **Analysis**

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

Staff recommended to the City Council Rules Committee that, should a fixed fee be proposed, the amount should be adequate enough to discourage frivolous appeals, but pointed out that any deviation from a deposit-based method would require the City to assume the remaining cost of

processing the appeal, regardless of merit.

The Rules Committee supported maintaining the cost recovery policy for applicants but recommended reducing the deposit amount by half, to \$2,500. The Rules Committee further recommended re-establishing a fixed appeal fee for non-applicants in the amount of \$500, similar to the amount charged by the City ten years ago. The Rules Committee discussed the feasibility of retroactively reimbursing non-applicants who were previously subject to the current deposit-based fee but did not reach consensus. Following a review of prior appeals, Staff found only one appeal filed by a non-applicant that paid a deposit (APL18-001, Parrot Street Apartments). All other prior appeals filed by non-applicants paid a fixed fee of \$792 or less, depending on the fee schedule in effect at the time of filing.

### **Previous Actions**

The current fee schedule was approved by the City Council on May 1, 2018 under Resolution No. 2018-034.

### **Board/Commission Review and Actions**

The City Council Rules Committee discussed appeal fees at its April 23 and June 25, 2018 meetings. The Rules Committee voted unanimously to recommend establishing a fixed \$500 appeal fee for non-applicants in addition to the reduced \$2,500 deposit for applicants on June 25, 2018.

### **Legal Analysis**

The State Constitution, and Prop. 26 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, legal 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. The Planning Division typically processes three or four appeals each year.

### **Related Legislative Files**

- Rules Committee Staff Report Regarding Discussion of Modifying Existing Planning Appeal Fees (18-178)
- Rules Committee Staff Report to Follow-Up Committee's Previous Discussion of Planning Appeal Fees (18-308)
- City Council Staff Report for Resolution Approving Adjustments to City Fees and Service Charges for 2018-19 (18-198)

- City Council Resolution Amending Title 6, Chapter 4 of the San Leandro Administrative Code Relating to Fees (18-197)

**ATTACHMENT(S)**

- Rules Committee Staff Reports of April 23 (18-178) and June 25, 2018 (18-308)
- City Appeal Fees by Fiscal Year
- Current Appeal Fees by City

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