



July 31, 2019

To: Oregon City - City Commission
From: Laura Terway, AICP, Community Development Director
Re: Proposed Appeal Fee Amendments

This memorandum is intended to address concerns raised related to proposed amendments to the Planning Division Fee schedule. Overall, the proposed amendments add clarity and transparency as well as provide more certainty to applicants submitting applications as well as charge for specialty services provided. The fees were discussed over a series of months at the Development Stakeholder Group meetings as well as at a City Commission Work Session and City Commission hearing in July. The following questions were identified:

- The following fees need to be adopted in order to implement the code amendments which were effective on August 2nd. The fees include:
 - New fee for Type I Master Plan Amendments
 - New fee for Type I Manufactured Home in a Manufactured Home Park
 - New fee for Type I Internal Conversion and 3-4 Plex
 - New fee for building permit review of a 3-4 Plex and Internal Conversion
 - New fee for Manufactured Home Park Review
 - Deletion of the “Modification” fee
 - Deletion of the “Extension (Land Use Permit)” fee

Fees for the above services may not be charged unless they fall within a previous fee description. The application of the existing fees to the revised amendments in some case may be unclear or not proportional to the streamlined standards and/or review process.

- The overall budget impact of the proposed amendments is not expected to be significant. The amendments include adopting new, relatively minor, fees revising a few existing fees, and reducing or eliminating a few fees as well. The overall budget for the Planning Department over the two-year biennium includes approximately \$524,000 in fees within a total budget of \$3,431,000, approximately 15%.
- A cost comparison to ten other jurisdictions was provided for the application types proposed to be amended, however, a request was made to add the comparative costs for Lake Oswego. The cost of fees in Lake Oswego was added resulting in eleven comparison jurisdictions.
- A question was raised regarding how the fees may be calculated according to the law. The fees are calculated based on actual costs and must be reasonable. A memorandum from the Assistant City Attorney as well as the Fee Explanation document provide further clarification.
- The City Commission requested the public identify any fees they had concern over. Aside from the appeal fees, the only other question or concern included a clarification of who pays the remand fees. The Fee Explanation was updated to clarify that the original applicant (not appellant) is likely to pay the fee remand if they wish the remand to be processed. No other questions aside from the appeal fees were identified.
- A majority of the concerns raised were regarding the change to the appeal fee for Planning Commission (PC) and Historic Review Board (HRB) decisions. Appeals occur after the PC or HRB

(a public body consisting of 5-7 appointed volunteers) has held at least one public hearing (with an opportunity for oral and written participation) and rendered a decision based on applicable adopted criteria. Prior to the hearing(s) staff publishes recommended findings and notice occurs through mail, email, online posting, and through a sign on the property. The above process is the same for both the PC and HRB, and both are appealable to the City Commission.

The City Commission expressed concern about charging the public the actual cost of the appeals to the City, but did not identify the extent to which they wanted to subsidize the appeals.

Appeal - PC Decision

The cost of appealing a Planning Commission (PC) decision to the City Commission was revised to be a flat rate rather than a flat rate plus actual City Attorney costs. This provides more certainty to applicants deciding to submit an appeal by knowing the total cost of the application upfront and provided more certainty that the fee will be paid. The flat rate was created by using the average of the City Attorney costs of all PC appeals in the past 10 years of \$6,714 (\$7,795, \$7,919.50, & \$4,427.50) plus the base fee. The actual City Attorney Costs consist of the actual fee the consulting City Attorney charged the City to assist on each of the appeals between the time the appeal was filed and the notice of decision issued. In all three cases, appellants were invoiced the appeal fee after a decision was rendered. The base fee charged accounts for the time and cost of noticing the appeal (including mailing, emailing, posting online, etc), holding required hearings, and the staff time to compose a recommendation, revise the recommendation to include findings addressing concerns identified by the public and Commission during the hearing process, and compose and issue a decision (including mailing, emailing, posting online, etc). This is estimated to include approximately \$100 in direct noticing costs and approximately 43 hours of staff time. The City Commission may choose to subsidize the cost of appeals by charging appellants less than the cost to the City to process the application. This is done for Neighborhood Associations which are not charged an appeal fee.

In a recent Land Use Board of Appeals (LUBA) decision the court found “the city demonstrated that the appeal fee is reasonable and consistent with the statutory authority” for an \$8,000 appeal fee (this included \$4,427.50 of City Attorney costs). Appeal fees tend to be relatively small compared to the cost of the application itself. For example the cost of the application associated with the aforementioned \$8,000 appeal was approximately \$60,000. The cost of the appeal in this case would have varied from \$150 in Tualatin to \$30,000 in Sherwood or Hillsboro.

Existing Fee: \$3,763 plus actual City Attorney fees
Proposed Fee (Reflecting Average Actual City Costs): \$10,477

Appeal - HRB Decision

The City Commission requested staff revise the Historic Review Board appeal from the existing rate of \$50 to capture a higher percentage of the costs of processing an appeal. OCMC 2.28.070.E limits the appeal fee to \$50, but this provision was removed on August 2nd. The same methodology for establishing the Planning Commission appeal fee was mimicked to determine the actual cost of the appeal, as the processes are identical. The average of the City Attorney costs of all HRB appeals in the past 10 years was identified as \$2,696.86 by averaging the City Attorney costs on the seven appeals (\$490, \$5,890, \$5,738, \$2,906, \$963.50, \$235, & \$2,655.50). The base fee charged in addition to the actual Attorney costs account for the time and cost of noticing the appeal (including mailing, emailing, posting online, etc), holding

required hearings, and the staff time to compose a recommendation, revise the recommendation to include findings addressing concerns identified by the public and Commission during the hearing process, and compose and issue a decision (including mailing, emailing, posting online, etc). This is estimated to include approximately \$100 in direct noticing costs and approximately 43 hours of staff time.

Existing Fee: \$50

Proposed Fee (Reflecting Average Actual City Costs): \$6,460