

MEMORANDUM

TO: Oregon City Commission
FROM: William Kabeiseman
Oregon City Attorney
DATE: June 17, 2020
RE: Agenda Item #8g – Modification of Planning Fee Schedule

Agenda Item #8g on the Commission's agenda for June 17, 2020, is Resolution 20-05, which would modify the Planning Fee Schedule to include a new fee for nonresidential development in the Thimble Creek Concept Plan area. The Commission received communication from a citizen expressing concern with that item for several reasons. This memorandum will address each of those concerns in order.

The first issue raised by the citizen involves the method of adopting the modification. The citizen specifically points to another situation when he raised an issue concerning the method of adoption and suggests that the amendment of a fee schedule requires a separate individual hearing. Without getting into the specifics of the previous matter, this modification of the fee schedule is not comparable. This agenda item is not a substantive change to the City's Comprehensive Plan or land use regulations, but the modification of the fee schedule to add an additional fee. The citizen points to, and the City Attorney is unaware of, any legal requirement to hold a hearing on the modification of the fee schedule.

It is worth noting that the Land Use Board of Appeals (LUBA) has agreed with the City generally that the City has appropriately adopted fees by resolution in the past:

“[N]othing in ORS 227.180(1)(c) prohibits the city's method of adopting its appeal fee. As explained, the city adopted OCMC 17.50.290 by ordinance and the city set its fee schedule by resolution. That procedure is not prohibited by ORS 227.180, which authorizes the city to “prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal.” *Nicita v. City of Oregon City*, 78 Or LUBA 463 (2018)

Although that quotation addresses a separate issue, the general theme from LUBA's opinion on the setting of fees is that local governments have broad discretion in adopting land use fees.

The citizen submitted a follow-up e-mail identifying additional issues with this agenda item. First, the citizen expressed concern generally with the use of the Consumer Price Index (CPI) and also asked additional questions regarding the use of the CPI for an entirely different fees involving appeals from the Planning Commission and HRB. Regarding the use of the CPI, the e-mail does not identify any legal issue with the use of the CPI and LUBA, in the earlier referenced opinion, has held that that “ORS 227.180 affords local governments broad discretion in calculating and assessing local appeal fees to defray the costs incurred in acting upon an appeal.” There is no reason to believe that the use of CPI, which reflects the general increase of costs in the region, would not fit within that broad discretion.

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Finally, as regards the appeal fees, those changes are beyond the scope of the resolution, which creates one additional fee in the Thimble Creek Concept Plan area. To the extent the Commission has concerns about those appeal fees, the proper course is not to address those concerns in this resolution, but to consider those appeal fees in a future agenda item.