

**SULTAN CITY COUNCIL SUBCOMMITTEE  
AGENDA ITEM COVER SHEET**

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**DATE:** December 30, 2010

**SUBJECT:** Policy Discussion on 2011 Fee Schedule;  
General Development Permit Fees

**CONTACT PERSON:** Robert Martin, Community Development Director

**ISSUE:**

How should the city organize its Fee Schedule for in-house and consultant review of land use applications?

(Note: This issue is presented to promote effective implementation of existing fees, it is not intended to act as an analysis of the fees themselves. There is not enough development activity to allow a new analysis of the fees at this time.)

**STAFF RECOMMENDATION:**

Staff recommends the following:

1. The fee for project review by city staff should be a specific amount/fixed fee. The fee should not be variable (variability is currently expressed by the concept of adding "direct cost" to the basic fee).
2. The fee for city staff review of all land use procedures should cover the city's first review of the initial application, and the second review, if required (second review means the city's review of the developer's response to the city's first review of the application).
3. Third and subsequent reviews should be charged 40% of initial base review fee to cover the staff time for what should be a shorter review and comment process.
4. The fee for project review by outside consultants should be a deposit plus a pass-through for the actual consultant costs invoiced to the city by the consulting firm.
5. The fee for project review by outside consultants should include a 15% administration fee to manage the contract that controls consultant billing and payment procedures.

**SUMMARY:**

**Problem Statement:**

The City's Fee Structure for General Development Permit Fees is unclear and subject to too much interpretation, uncertainty, and challenge. Factors contributing to this problem are:

1. The Fee Structure assumes that the City is tracking hours, expendable costs, overhead costs, and other costs for in-house (city staff) review of an application. (This assumption is built into the Fee Structure through the repeated use of the term "Direct Cost" in reference to in-house processes.)
2. The City does not have a tracking system in place to efficiently and effectively track hours, expendables, and overhead costs associated with a particular project.
3. Development of a financially and legally defensible tracking system for individual project costs would involve significant investment in computer systems, finance department procedures, and staff training. Current development volumes and budget issues do not warrant the required investment.

**GOAL:**

Simplify the existing General Development Permit Fees chapter so that it:

- clearly defines fees that apply to various application types and processes
- can be effectively and accurately administered by city staff
- can be understood by applicants and their development teams

**BACKGROUND:**

Fees for City services are established by the Annual Fee Schedule which is updated for each new calendar/budget year.

The General Development Permit Fees chapter deals with land use applications, administrative reviews, hearing examiner processes, and permits for land use and building activities.

The Development Permit Fees chapter has been added to over the years without looking at the basic assumptions underlying its organization. When staff engaged in review of this chapter for updating along with the 2011 budget, the full scope of the underlying difficulties became apparent.

This report presents large scale conceptual issues for consideration by the Council Subcommittee. Based on direction from this interaction, staff will prepare a second Subcommittee report and a draft of the General Development Permit Fee chapter that incorporates the direction received at this meeting.

There are several detail level issues with the current Development Fee chapter such as headings, sub-headings, and grouping of categories. These will be addressed when the new draft chapter is brought back for review. These low-level items are not the topic of this agenda item.

**DISCUSSION:**

**Direct Cost Issue**

The concept that causes the most difficulty in the existing Fee Schedule is repeated use of the term "Deposit + Direct Cost". This can be seen in the excerpt from the Fee Schedule in the "Selected Language" topic below.

The problem with this term is contained within the definition of "Direct Cost" which is also included in the Fee Schedule (see excerpt below). All manner of consultant, attorney, and city in-house staff and overhead costs are gathered together under the term "Direct Cost" without direction or understanding of the system needed to track these costs.

Selected Language from Current Fee Schedule

Many of the Development Fees for in-house and/or consultant review specify the charge for a procedure as a "deposit + direct cost". Examples are as follows:

<i>Consultant Review .....</i>	<i>\$2,000 deposit + direct cost</i>
<i>Preliminary PUD, Administrative Review .....</i>	<i>\$500 + direct cost</i>
<i>Subdivision- Preliminary (based on 2 staff reviews).....</i>	<i>\$1,200 + \$100 per Unit/Lot</i>
<i>Subdivision-Preliminary, Extra Reviews .....</i>	<i>\$500 Deposit + Direct Cost</i>
<i>Hearing Examiner Fees.....</i>	<i>\$1,500 deposit + direct cost</i>

Direct Cost is defined in the Fee Schedule as

1. *Additional Staff time required to evaluate review and/or process applications, projects, or development plans.*
2. *Additional public meeting costs, and;*
3. *Additional inspections and/or testing of all development/land use improvements.*
4. *Direct costs may also include City Attorney, City Consultant fees, City administrative costs and City Hearing Examiner Fees; additional public notice costs including newspaper, mailings and public postings. Staff time is billed at city cost including allocable benefits and overhead. If staff time is incurred during overtime or on holidays, the staff time will be billed at overtime or holiday rates.*

To say that the City will do Administrative Review of a Preliminary PUD for \$500 + direct cost, and to define direct cost to include “Additional Staff time required to review projects...” requires the existence of a system whereby the city has done or can do the following:

- Has determined the “appropriate or acceptable” amount of time and materials required to review a PUD.
- Can track the investment of staff time, materials, and overhead from the time of application submittal.
- Can determine when the “appropriate” amount of investment has been exceeded.
- Can construct a financially and legally defensible additional billing for “Direct Cost” expended beyond the initial \$500.00 fee.

The City has not previously accomplished these tasks, and does not have a system in place whereby these tasks can be accomplished with any degree of documented reliability.

A recent effort to use this fee system for the Arndt project resulted in confusion and challenge by the applicant. After several efforts to define the term “direct cost” and to track staff time to determine direct cost, it became apparent that the fee structure was the problem.

Proposed answer to Direct Cost Issue

Staff proposes that the concept of “Direct Cost” be removed from the Fee Schedule for in-house review. An example of this type of charge from the current 2010 Fee Schedule is:

*Subdivision-Preliminary, Extra Reviews .....\$500 Deposit + Direct Cost*

For processing by the City using in-house staff and materials, the fee should be a fixed amount such as this item from the current 2101 Fee Schedule:

*Subdivision- Preliminary (based on 2 staff reviews).....\$1,200 + \$100 per Unit/Lot*

Staff proposed that the fees for in-house review that have the “Direct Cost” concept be converted to the fixed fee concept. This should cover two reviews, also as indicated in the example above.

**Administrative Fee for Consultant Management Issue**

When a consultant is brought into the city’s review process, the city incurs costs to manage the consultant for billings, questions on process, and potential contacts between the applicant and the consultant.

The current Fee Schedule language does not provide for recovery of the contract management costs, but does charge a fee to the applicant for direct contact to the consultant through the following provision.

*If Developer Contacts City Contract Consultant .....15% Administrative Fee + direct cost*

The reason for this charge in the current Fee Schedule is that some of the recent development projects in the city were found to be making multiple contacts directly to the City's contract consultant, running up extensive charges without the City's knowledge, and then resisting payment of the bill because the City was charging them so much.

The 15% fee was established to curtail the tendency to use the City's contract consultant as an ongoing design and feedback resource during the response submittal phase of a project, and to cover the City's cost of monitoring and billing for the contacts over which the City had no control prior to implementation of the fee.

Uncontrolled access to the City's contract consultant(s) involved in review of a project can be abused as exhibited by prior activity in the community. Even if the City holds the documented billing from the consultant, the applicant may object to and delay payment to the City for these services when the magnitude of the bill is fully realized.

On the other hand, it is beneficial for all concerned to move to a complete and approvable submittal as quickly and effectively as possible. This goal can be assisted by contact between the applicant's consultants and the City's contract review consultant(s).

Proposed answer to Consultant Management Issue

Because of the difficulty of tracking and billing for separate contacts between applicant and consultant (see excerpt above) staff proposes that the 15% fee for each contact be deleted.

To account for city investment in management of consultant contracts for review of development applications, staff proposes that applications for subdivisions and other processes that may involve consultant review be charged a one-time 15% administrative fee, the percentage being calculated on the base fee for the application. For example, the administrative fee for a Preliminary Subdivision Application would be as follows:

*Subdivision- Preliminary (based on 2 staff reviews).....\$1,200 + \$100 per Unit/Lot  
Administrative Fee..... \$1,200 (base fee) x .15 = \$180*

**Proposed definitions for terms that affect administration of the land use fee structure:**

Council members are asked to review and affirm the following definitions. If affirmed, staff will use these terms and concepts to reconstruct the land use fee schedule to best achieve the goals of simplification and clarity.

1. "**Fee for Initial City Staff Review**" means that the stated amount is the fee for review of the application type, regardless of how long it takes to do the review of the particular project. This fee is not a deposit (as labeled in the current fee structure) and will be renamed to indicate that it is not refundable in whole or in part.
  - a. "**City Staff Review**" includes all staff activities related to land use, engineering, and public works review of the proposed project. It staff time, expendables, travel, overhead, and all city staff investment in review of the proposed project.

- “City Staff Review” does not include contract administration activities by the city’s finance and executive’s office.
- b. “Fee for Initial City Staff Review” includes the first review of the project, and review of the applicant’s second submittal that includes the modifications called for in the first review.
  - c. “Fee for Initial City Staff Review” may include a “Base Fee” and a “Per Lot Fee” (Short Plats and Subdivisions for example).
2. “Fee for **Additional City Staff Review**” will be charged to projects that require submittals and reviews after the second review to respond to changes called for in the second review, the cost of the third (and subsequent reviews, if required) will be **40% of the Base Fee** for the application type.
    - a. “Base Fee” means the listed fee without the “per lot” charge in the case of applications referred to in item 1. c. above.
  3. “Administrative Fee for Contract Management” is a 15% one-time charge based on the “Initial Deposit for Consultant Review”. It covers the City’s administration of the consultant contract for the life of the project review. If there are multiple consultant contracts, this fee is charged for each consultant involved in the project review.
  4. “Deposit for **Initial Consultant Review**” means that the stated amount is a reasonable estimate of the first review by the consultant firm and that the firm will track and document hours/costs against that initial balance and will invoice the city in periodic installments.
    - a. The “Deposit for Initial Consultant Review” is a true deposit in that the charges by the consultant must be tracked by the hour. If the consultant does not use all of the “deposit” then the balance, minus an administrative fee for city processing, is refunded to the applicant.
    - b. “Consultant review costs” include billable hours, expendables, travel, overhead, and any other legitimate charges authorized in the consultant contract with the city.
  5. “Deposit for **Additional Consultant Review**” means that fees for review of applications by outside consultants are supplemented by additional deposits as the consultant documents expenditure of the account which is currently funding their activities. As with the Initial Deposit, unexpended funds in the Additional Deposit are refunded to the applicant at the completion of the project review phase.

#### **STAFF RECOMMENDATION:**

Staff recommends the following:

1. The fee for project review by city staff should be a specific amount. The fee should not be variable (variability is currently expressed by the concept of adding “direct cost” to the basic fee).
2. The fee for city staff review of a land use procedure should cover the city’s first review of the initial application, and the second review (second review means the city’s review of the developer’s response to the city’s first review of the application).
3. Third and subsequent reviews should be charged 40% of initial base review fee to cover the staff time for what should be a shorter review and comment process.
4. The fee for project review by outside consultants should be a deposit with hours and costs tracked as is customary for consulting firms.
5. The fee for project review by outside consultants should include a charge for city administration of the contract that controls consultant billing and payment procedures.
6. The 15% administrative fee for each direct communication between developer and outside consultants should be deleted in favor of item 2 above.