

**Lemos, June**

---

**From:** Jacob Patterson [mailto:jacob.patterson.esq@gmail.com]

**Sent:** Monday, December 11, 2017 3:02 PM

**To:** Ruffing, Linda

**Subject:** Pubic Comment -- City Fee Schedule Update

Council-members [via BCC],

I reviewed the City's updated staff report for the fee schedule update. My objections remain. In particular, it is important to recognize that not all of the City's fees are regulatory fees so the analysis of the propriety of regulatory fees only applies to fees that fall into that limited category.

The City added an additional discussion to the staff report for this continued item regarding case law applicable to regulatory fees. That information is interesting but irrelevant to my earlier comments and concerns because most of the fees in the fee structure are not regulatory fees so that case law is not applicable to many of the objectionable fees. Moreover, the City mentions that responsible staff estimated their time for particular tasks to justify different fees. This might be true for some fees but not all fees in the City's fee schedule spreadsheets include worksheets with any estimated staff time and other costs (e.g., Planning and Development Services fees that are based on a percentage of the permit value). There is no data or analysis provided for these fees.

Regulatory fees have a set of procedural requirements that is different from other types of fees. For example, development fees are not regulatory fees and must be adopted pursuant to the requirements of the Mitigation Fee Act (Gov. Code §§ 66000 et seq.). Regulatory fees are adopted to achieve particular regulatory goals (e.g., achieving air quality standards and mitigating overall impacts from new development) rather than fees that are imposed as a condition of development project approval.

Some of the City's fees are regulatory fees, some are development fees, some are fees for services, some are fees for particular privileges, etc. Each of these types of fees involve different procedures and acceptable analytical approaches but the City has failed to apply the correct procedures for each category of fee that it includes in the proposed fee structure.

Based on the updated staff report, the City is taking a uniform approach to simply estimating staff time for each underlying task for a particular fee. However, there are not spreadsheets with staff time estimates for each fee that is included in the fee structure and there are additional inputs like copying charges and other non-staff time fee components that also contribute to the fee analysis. There is no support for any of these inputs.

The City's updated staff report also fails to address the bulk of my more specific questions or concerns in any way. Where is the analysis and support for these other non-staff time cost components? How do we know, for example, that it costs \$165 in copying charges to process for each appeal application (not for the review of the appeal itself, just the processing of the appeal)? What is the relationship between past appeals copying costs and the estimated amount that has been consistent in across the City's fee update spreadsheets?

Then we have the staff time components of these fees. How does the City justify charging estimated staff time to an applicant fee payer when the City's cost allocation plans already allocate the described staff members' time to the City's enterprise funds rather than the General Fund? How can the same City staff positions have their time fully allocated to the water and waste-water enterprise funds and then also have the estimated staff time included in a particular fee? Do the enterprise funds get reimbursed for this "double-counted" staff time or is the City collecting these same staff expenses from the enterprise funds and then the fee-payers as well?

How does the City justify calculating overhead expenses based on the total overhead for a particular category without accounting for the fact that the cost allocation plans already allocate much of this same underlying overhead to the enterprise funds? The City cannot justify charging both the enterprise funds and fee payers for the same expenses. The overhead components of the cost allocation plans were required to be altered because of over-allocation to the enterprise funds yet the history of the fee structure updates for this same period does not include any corresponding adjustments or changes to reflect the different cost allocation plans. However, overhead is a component of the City's fee analysis and is partially used to calculate each fee.

If you just look at the calculations for a single fee rather than the totality of all of the fees as well as the allocations in the City's cost allocation plans, the issues are not evident. But when the combined revenues of all the fees are combined with the City's costs that are allocated to the enterprise funds (and thus are otherwise reimbursed by the water and waste-water customers' utility payments), you see the issue, which is that the City is generating fee revenue for costs that are already covered by rate-payers and from other fees that duplicate the time allocated to particular fees.

Moreover, even assuming that a fee is not counting costs that have already been allocated to, and reimbursed from, an enterprise fund, the estimates of particular tasks do not appear to be reasonable based on the City's own spreadsheets for these fees. The City can assert that this is the case but asserting something does not prove that the assertion is actually true or justified. In the case of the City's fee schedule, the City has failed to carry its burden to justify all of the fees, particular those fees that are neither regulatory fees and do not include a worksheet in the City's fee schedule spreadsheets.

Regards,

--Jacob