



Council Agenda Report

Item 5e

Department: Attorney
Cost Center: 1501
For Agenda of: 6/1/2021
Placement: Consent
Estimated Time: N/A

FROM: Christine Dietrick, City Attorney
Prepared By: Kelly White, TAO Legal Analyst

SUBJECT: CLARIFICATION AND APPROVAL OF ADMINISTRATIVE APPEAL FEES
FOR INCLUSION IN THE COMPREHENSIVE FEE SCHEDULE

RECOMMENDATION

1. Adopt a Resolution entitled, "A Resolution of the City Council of the City of San Luis Obispo, California, adopting and confirming various fees for Administrative Appeals;" and
2. Approve a fee to appeal to the Tree Committee consistent with current language of San Luis Obispo Municipal Code Section 12.24; and
3. Confirm the applicability of an existing fee to appeal an administrative citation to the Administrative Review Board; and
4. Confirm the applicability of an existing fee to appeal an administrative citation to the Construction Board of Appeals; and
5. Approve modifications to the language of the Comprehensive Fee Schedule to clarify the applicability of the fees referenced above; and
6. Request that the Administrative Review Board consider staff recommended modifications to the administrative citation appeal process, as currently codified, and recommend to the City Council any changes or fee modifications deemed necessary.

DISCUSSION

Background

Tree Committee

In 2019, the City Council adopted [Ordinance 1664](#) which, in part, repealed and replaced sections 12.24.090 and 12.24.180 of the City's Tree Regulations. After adoption of Ordinance 1664, no decision of the Tree Committee ("Committee") was appealable to the City Council, making the role of the Committee advisory to either the Community Development Director (SLOMC 12.24.090(F)(2)) or the applicable "approving authority" (SLOMC 12.24.090(F)(4)). Consistently, applications under Municipal Code section 12.24.090(E)(3) for tree removals "based on property owner convenience" also call on the Committee to advise the Community Development Director so a decision can be made.

Currently, though no decisions of the Tree Committee are appealable to the City Council, the following remains in the Comprehensive Fee Schedule:

24	Appeals to the Council for Administrative or Advisory Body Decisions	
25	Tree Committee	\$125.71
26	All Other Appeals	\$312.61
	Community Service Worker Registration Fee	\$59.44

Figure 1. Screen capture, FY 2021-22 Comprehensive Fee Schedule, 'Finance' tab, lines 24-26

Staff recommends that the "Tree Committee" fee listed in Figure 1 be applied to those appeals of City Arborist decisions to the Tree Committee under Municipal Code section 12.24.090(E)(2), tree removals for "tree health or hazard mitigation", which come before the Committee, but currently have no adopted fee.

Administrative Review Board

In 2015, the City Council adopted [Ordinance 1625](#) which, in part, repealed and replaced Municipal Code section 1.24 (the City's Administrative Code Enforcement Procedures) and established the Administrative Review Board (ARB) advisory body. Appeals of administrative citations reviewed by the ARB require extensive staff time to schedule, notice, and coordinate each hearing, and to draft a staff report for each agenda item.

The "All Other Appeals" fee, shown in Figure 1, is currently being applied to appeals heard by the ARB. Staff recommends Council expressly confirm the applicability of this fee to ARB appeals prior to finalization of the 2021-22 Comprehensive Fee Schedule.

Construction Board of Appeals

The same [Ordinance 1625](#) referenced above also established the current purview and procedures of the Construction Board of Appeals (CBOA). Since 2015, when the ordinance was adopted, the fee staff has applied to appeals reviewed by the CBOA has been the "All Other Appeals" fee, shown in Figure 1. However, the Comprehensive Fee Schedule currently contains the following fees, which staff believe should more accurately be applied to appeals to the CBOA:

8	Appeal of Building Official Decision - BLDG	\$1,196.04
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Figure 2. Screen capture, FY 2021-22 Comprehensive Fee Schedule, 'Additional Building Fees' tab, line 8

55	Handicap Board of Appeals - BLDG	\$1,196.04
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Figure 3. Screen capture, FY 2021-22 Comprehensive Fee Schedule, 'Additional Building Fees' tab, line 55

Staff recommends that the Council confirm as applicable to appeal to the Construction Board of Appeals the fees shown in Figures 2 and 3. Staff requests this confirmation in the interest of public transparency and to confirm that the recommended fee is consistent with current Council intent and should be applied going forward, rather than the general appeal fee that seems to have been applied in error.

Comprehensive Fee Schedule – Language Edits

In order to clarify and capture the fee changes being recommended, the section of the 2021-22 Comprehensive Fee Schedule shown in Figure 1 will be modified as follows:

Appeals to Advisory Bodies Following Administrative (non-Planning) Decisions	
Tree Committee	\$125.71
Construction Board of Appeals	\$1,196.04
Administrative Review Board	\$312.61
All Other Appeals	\$312.61

Policy Context

- Throughout the City there exists a consistent practice of charging an application fee for staff review and decision-making, and then an additional fee to appeal the decision on an application if the appeal process requires extensive staff time. Adoption of a fee to appeal to the Tree Committee would be consistent with that practice.
- Fee Studies are a regular part of the provision of City services to ensure fees are reflective of the City's costs of providing the associated services. In the coming year, the Code Enforcement Division intends to evaluate the fees within its scope of work. It is recommended that City Council provide direction to staff and the Administrative Review Board to review and analyze not only fees related to the administrative appeal process, but the entire process, as currently codified, and recommend to the City Council any changes or modifications deemed necessary.

Public Engagement

The fees being recommended here for adoption and/or confirmation are essentially a final clean-up and implementation step of public hearing processes that occurred years ago. The fee and process analysis that will occur as a 'Next Step', for both Code Enforcement and the administrative citation appeals processes, will include multiple opportunities for public engagement at both advisory body and City Council meetings.

CONCURRENCE

The Public Works Director, Community Development Director and Chief Building Official concur with these recommendations.

The Finance Department's Revenue division has reviewed the recommendations and will integrate the approved changes in the City's Comprehensive Fee Schedule.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act does not apply to the recommended action in this report, because the action does not constitute a "Project" under CEQA Guidelines Sec. 15378.

FISCAL IMPACT

Budgeted: Not Applicable
Funding Identified: No

Budget Year: Not Applicable

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund	\$0	\$0	\$0	\$0
State				
Federal				
Fees				
Other:				
Total	\$0	\$0	\$0	\$0

Because an insignificant amount of additional staff work is anticipated as a result of adopting and/or confirming the fees being recommended, no new fiscal impact will be incurred. All related work is included in appropriations requested for the 2021-23 Financial Plan.

ALTERNATIVES

1. ***Deny the recommended actions.*** This alternative would leave ambiguities within the Comprehensive Fee Schedule indefinitely which is not a viable option.
2. ***Modify one or more of the fees to an amount other than that recommended by staff.*** If this alternative is chosen, specific reasoning for the modification should be included in Council direction.
3. ***Authorize Recommendation 5, but deny the other recommended actions pending the results of the analysis.*** The ambiguities that would remain within the Comprehensive Fee Schedule would not be ideal, but there would be a plan in place to resolve them.

ATTACHMENTS

A – Draft Resolution – Various Administrative Appeal Fees