



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-222

A resolution expressing intent to implement the recommendations of the 2024 User Fee Study, including a full cost recovery model, establishment of a master fee schedule, and annual adjustment.

A RESOLUTION OF INTENT TO IMPLEMENT THE RECOMMENDATIONS OF THE 2024 USER FEE STUDY INCLUDING A FULL COST RECOVERY MODEL, ESTABLISHMENT OF A MASTER FEE SCHEDULE, AND ANNUAL ADJUSTMENT

WHEREAS, Fayetteville has a long and well-established history of charging user fees for a number of City services, including those associated with development review; and

WHEREAS, documentation from as early as the 1980s indicates codified fees for project classes that are still familiar today: lot splits, preliminary plats, large scale developments, and others; and

WHEREAS, in mid-1991, a formal user fee study was initiated but, following a change in the form of Fayetteville's form of municipal government between 1991 and 1992, implementation was delayed with only portions adopted in the mid-1990's; and

WHEREAS, in 2003, the City Council approved a contract for a second user fee study, an element of which focused on Planning and Building Safety; and

WHEREAS, in June 2005, the City Council approved a User Fee Cost Recovery Policy for City Services, but no discernable action was taken, with many fees from 2024 remaining as they existed in 2004; and

WHEREAS, in February 2023, the City Council approved a contract with MGT for an updated user fee study whose core objectives include evaluating and improving the current fee structure, defining the cost of City services, and recommending fees based on the cost of service.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby expresses its intent to implement the recommendations of the 2024 User Fee Study including a full cost recovery model, establishment of a master fee schedule, and annual adjustment.



MEETING OF JULY 2, 2024

TO: Mayor Jordan and City Council
THRU: Susan Norton, Chief of Staff
FROM: Jonathan Curth, Development Services Director
SUBJECT: **A resolution expressing intent to implement the recommendations of the 2024 User Fee Study, including a full cost recovery model, establishment of a master fee schedule, and annual adjustment.**

RECOMMENDATION:

Staff recommends approval of a resolution expressing intent to implement the recommendations of the 2024 User Fee Study, including a full cost recovery model, establishment of a master fee schedule, and annual adjustment.

BACKGROUND:

Fayetteville has a long and well-established history of charging user fees for a number of City services, including those associated with development review. Documentation from as early as the 1980s indicates codified fees for project classes that are still familiar today: lot splits, preliminary plats, large scale developments, and others. In mid-1991, a formal user fee study was initiated. Following a change in the form of Fayetteville's form of municipal government between 1991 and 1992, implementation was delayed, with only portions adopted in the mid-1990s.

Subsequently in 2003, Council approved a contract for a second user fee study, an element of which focused on Planning and Building Safety. This limited scope indicated a near total cost recovery, and included a proposal to reduce Building Safety fees and increase Planning fees to accurately reflect the service costs of the individual divisions.

During the same period, Council adopted a User Fee Cost Recovery Policy for City Services (attached) in June of 2005. Among other tenets, the policy included a standard for user fee evaluation on a three-year cycle, an annual adjustment of fees based on the All Urban Consumer Price Index, fees that "should be levied fairly and equitably and properly to account for the benefit received by each user", and a standard that "Development charges (annexation, rezoning, lot split, construction plan review, infrastructure, stormwater, etc.) shall recover 100% of the full cost of providing the services unless reduced or waived by City Council." Despite the user fee study's proposal and the policy's adoption, no discernable action was taken, with many fees from 2024 remaining as they existed in 2004.

In the intervening years, several new development fees were introduced or saw one-off changes as additional services were offered or particular issues of recovery were identified, but no concerted study of development review fees occurred.

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More recently, in February 2023 the City Council approved a contract with MGT for an updated user fee study. Core objectives of the study include evaluating and improving the current fee structure, defining the cost of City services, and recommending fees based on the cost of service. The scope of the contract does not include impact fees.

DISCUSSION:

MGT completed a review of City development review-related services, the hourly rates of staff providing those services, and the time providing each service in six areas. These include Building Safety, Business Licensing, Engineering, Fire, Planning, and Water & Sewer. The most prominent finding of the study is a significant discrepancy between the cost of services provided and the user fees charged, totaling approximately \$2,164,691.

	<u>Recovery</u>	<u>'23/'24 Revenue</u>	<u>Cost</u>	<u>Subsidy</u>
Building Safety:	79%	\$2,124,791	\$2,681,470	\$556,679
Business License:	62%	\$119,401	\$192,650	\$73,249
Engineering:	24%	\$118,425	\$494,359	\$375,934
Fire:	0%	\$-	\$45,580	\$45,580
Planning:	22%	\$159,715	\$731,918	\$572,203
Water & Sewer:	22%	\$156,975	\$698,021	\$541,046
TOTAL:	55%	\$2,679,307	\$4,843,998	\$2,164,691

Provided this information, staff and the consultant propose a comprehensive cross-divisional and cross-departmental modification to fees and fee structures related to development review (see attached User Fee Study, Appendix A). These changes are founded on several best practices and principles, and include:

- *Implement a full cost recovery model:* While the community may be a beneficiary of the City’s development standards being upheld, it is ultimately an applicant who is driving the need for development review services. Additionally, ensuring an adequate level of cost recovery also manages demand by providing resources for adequate development review staffing and ensuring that demand for services is not overly-stimulated by artificially low fees.
- *Adjust user fees annually:* Incorporating an annual fee adjustment affords the City the opportunity to maintain cost recovery as salaries and benefits increase between formal fee studies. A consumer price index (CPI) factor is the most common means of enacting this practice.
- *Execute a user fee evaluation every three to five years:* While implementing annual fee adjustments per consumer price index or other metric affords the ability to maintain cost recovery, changes in policy, development standards, staffing, and other factors can reduce or increase the cost of services in ways not captured by annual adjustment.
- *Restructure development fees:* Where fee categories are more varied than annual demand suggests is appropriate, or conversely, too uniform, some fees are proposed for removal, addition, or restructuring. This seeks to accurately reflect the volume of applications, their respective costs, and instances where new services were created or old ones eliminated.
- *Establish a master fee schedule:* With fees currently codified in the Unified Development Code and other sections of ordinance, they are subject to organizational limitations and require legislative action to modify. As an alternative, the creation of a master fee schedule allows for a centralized document to support staff and applicants that may also be adjusted administratively within the bounds of established standards, such as the consumer price index (CPI). These changes would then be routed to the City Council for consideration.

- *Consider targeted, not blanket subsidies:* Currently, all applicants benefit from development review fees that are publicly subsidized. This includes for-profit as well as non-profit organizations, luxury and Affordable home builders, as well as national corporations and locally owned business. Implementing a full cost recovery model of development fees allows both meaningful, targeted incentives and can encourage development that serves a public good.

BUDGET/STAFF IMPACT:

With implementation of the user fee study's findings, the City will be reimbursed for more of its costs in providing municipal services.

ATTACHMENTS: SRF (#3), MGT User Fee Study (#4), Resolution 119-05 (#5)

Mailing address:

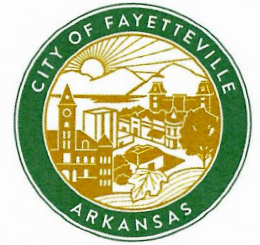
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TO: Mayor
City Council

CC: Kara Paxton, City Clerk/Treasurer
Susan Norton, Chief of Staff
Paul Becker, Chief Financial Officer
Jonathan Curth, Development Services Director

FROM: Kit Williams, City Attorney

DATE: June 27, 2024

RE: Raising Development Fees

I was on the City Council in the late 90's when the Administration proposed substantial increases in all development related fees from Large Scale Developments (LSDs) and Building Permits, to Rezoning requests and Lot Splits, etc. That Administration like today's proposed to charge home builders, developers, and persons needing any type of development permit 100% of the estimated cost to the City to process any requested permits and inspections required by such permit. My fellow City Council Members and I rejected the proposed 100% cost recovery fee schedule and instead agreed to a lesser amount, basically to cost share part of our expenses. There were several factors that caused that City Council to reject the proposed 100% cost recovery fee schedule.

First, I want to make it clear that I believe that City Council enacted development regulations passed in the last three decades have helped make Fayetteville a more pleasant place to live and work. Basic health and safety development regulations for structural integrity, safe electrical and natural gas installation, water and sewer requirements, fire safety, etc. are certainly beneficial to both the City and its residents and to the builder and owner of homes, businesses, offices, etc. Our knowledgeable and experienced building safety inspectors can and have caught construction mistakes in time to ensure

safe buildings while saving builders money to fix mistakes when they are the least expensive to fix.

However, the City Council I served on as well as later City Councils have also imposed regulations for aesthetic or community reasons beyond the health and safety regulations noted above. Aesthetic considerations such as Commercial Design Standards (originally enacted by the Council I was a member of) are important and valuable for Fayetteville and her citizens. Aesthetics can legally support the imposition of regulations upon a developer or builder even if they cost the builders additional money to finish their buildings and may be deemed undesirable by the builder. The City Council I was a part of in the 90's thought these types of development regulations should be enforced upon developers, but the City should pay for at least part of our review and administration of these regulations which are clearly for the benefit of our City and citizens more than the developer or builder.

For example, our sign ordinance's enforceability is supported by both aesthetics and traffic safety (to not divert drivers' attention from the road ahead). These sign limitations for businesses do not make the restricted business more valuable although these limitations overall have made Fayetteville more attractive and valuable for all businesses, offices, and residences. Because of First Amendment considerations, I have always advocated a very low permit cost for signs and do not recommend any increase in the current fee.

All regulations for design standards are primarily for aesthetic reasons to enhance pedestrian and neighboring views even though they usually also result in a more attractive building for the owner. Aesthetic considerations legally support their imposition upon builders who might otherwise not include any of the required building enhancements because of the additional expense or even because these may not be viewed as actual enhancements by the builder nor what the builder would prefer to see on the building. For these and all other aesthetic rather than building safety regulations, the City Council I was on in the 90's refused to support the call for 100% cost of city employee review of regulations as the proper and fair amount to charge builders and developers.

The City Councils I served on in the 92-98 period passed the Tree Ordinance as well as the Parking Lot Landscaping Ordinance. I voted for both of these, but I recognized that these regulating ordinances were primarily to protect the interests of the City and citizens rather than the builder or developer. Again, we believed it was desirable and proper to require builders and developers to

comply with these regulating ordinances, but not also force them to pay for all of the City's work to administer these regulations for the public good.

Some regulations beyond health and safety development regulations that I believe to be appropriate for substantial cost recovery from owners or developers are rezoning requests as well as vacations of easements, rights of way, alleys and streets, and variances from normal development requirements. This is because all of these requests principally benefit the owner rather than the City. An applicant for all of these requested permits or rezonings should probably pay for most or all of the City's cost to administer them.

Finally, I have always believed that it is legally much safer not to assess the "full cost" to the city for development permits because if our consultant has made any possible mistakes in the complex analysis to determine our actual cost, their fees could be determined by a Court to be unauthorized taxes. Another consultant working for a developer wishing to challenge our development fees as too costly, might very well reasonably disagree with portions of our consultant's analysis and conclusions and claim we are charging more than our actual costs. Simply reducing the proposed new fees by as little as ten percent should prevent not only a successful, dangerously expensive court challenge to the newer fees, but therefore also prevent any costly and lengthy litigation at all. Because I have confidence in our consultant's experience, competence and ability, even a minor 10% cushion should prevent any legal challenge.

The City Council could encourage more smaller (and therefore more affordable) housing, by eliminating building permit fees for houses under 1,200 square feet (such as an Accessory Dwelling Unit and maybe some regular or cluster housing). I think a square footage matrix is more reliable than some proposed valuation amount guessed at before construction. A dollar amount valuation would be more difficult to confirm and enforce than a square footage limitation.

Currently there is only one fee for any appeal allowed in Chapter 155 **Appeals**. I am still not sure how that fee snuck in. I recommend that there be no separate fee assessed for any appeal authorized in Chapter 155 **Appeals**. Instead, I recommend that the basic fee for a vacation, rezoning or variance and all development proposals include an amount to recover the historical frequency of appeal and costs to the city for such zoning or development permit appeals. I suggest no additional amount should be separately assessed for an appeal.

CONCLUSION

Our development permit applications often include both health and safety regulations and reviews as well as aesthetic regulations and reviews. I do not recommend trying to divide all the considerations into different permits which would just make our review and approval process more cumbersome. We should keep approximately the same number of paid permits needed for the project. The mixed permits for both health and safety as well as aesthetics and community purposes should include cost sharing of the expenses by both the applicants and taxpayers. The City Council may wish to reduce our taxpayers' expenditures from the current 45% of current review costs to 25% by boosting the rezoning and builder/developer fees from 55% to 75% of the needed revenue.

Please keep in mind that although an earlier City Council may have expressed its intent to recover 100% of regulation costs, in reality it continued to share the regulatory cost burden just as the City Council I served on in the 90's did. I think this fairer and more appropriate than placing 100% of the regulatory costs to administrate all the regulations we impose on our developers and builders.