

## **RESOLUTION NO. 2010-23**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREMONT REVISING AND RESTATING THE CITY'S POLICIES AND ADMINISTRATIVE PROCEDURES REGARDING LAND USE AND DEVELOPMENT SERVICE DEPOSITS**

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WHEREAS California law authorizes the City of Fremont to assess fees and charges to recover its costs in providing services related to the use of and development of real property within the City; and

WHEREAS, the City of Fremont does assess fees and charges for the land use and development services it renders and for many of the service activities those fees and charges are computed by multiplying the staff labor costs (based on hours expended) in providing the service activity by a multiplier factor that is calibrated to facilitate the City's recovery of its costs for the service activities rendered; and

WHEREAS, the City of Fremont collects deposits of fees in advance from developers in connection with land use planning applications and development services. However, the deposit amounts were last set in 2001 and often do not adequately reflect the estimated costs of the City services to be provided; and

WHEREAS, the City's policies and procedures regarding these deposits are contained in different parts of the City's Master Fee Schedule; and

WHEREAS, it is in the best interests of the developer community to have a reasonable advance estimate of their costs for the service activity they are requesting that is typical for a standard project similar in nature to the project they are contemplating; and

WHEREAS, the City needs to protect the public treasury from applicant non-payment and create disincentives for frivolous or incomplete service applications in relation to any particular development activity application; and

WHEREAS, the public interest demands that services rendered to the benefit of particular developers be paid for by those developers and not be borne by the general public; and

WHEREAS, the interests of the developer community in having deposit amounts that more accurately reflect the level of services required by their project and the interests of the City and the public in ensuring payment is received for services provided can be satisfied by allowing fee deposit amounts to be set administratively; and

WHEREAS, the City's fee deposit system can be administered more consistently and efficiently if all applicable policies and procedures are set forth in a single document.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF FREMONT  
RESOLVES AS FOLLOWS:

SECTION 1. The City Council makes the following findings and declarations in connection with the adoption of the policies and procedures relating to land use applications and development services deposits as set forth in Attachment 1 attached to and made a part of this Resolution:

a. The interests of the developer community, the general public, and the City can be optimally satisfied by requiring appropriate deposit amounts against which development fees and charges can be applied and setoff as the requested services are rendered.

b. Allowing deposit amounts to be set administratively will provide for flexibility in setting deposit amounts so that the deposit amounts more accurately reflect the complexity of the proposed project and the estimated level of City services required to process land use applications and provide development services associated with that project.

c. Deposits are not fees themselves so their establishment and administration are not subject to the provisions of the Mitigation Fee Act (California Government Code Sections 66000 et seq.). Actions taken by City staff in accordance with the policies and procedures adopted by this resolution do not impose or change or extend any particular fee or charge amount fixed by the City Council.

SECTION 2. The policies and procedures for the establishment, collection, administration and distribution of deposits related to land use applications and development services as set forth in Attachment 1 to this Resolution are hereby adopted. Developer deposits related to each service for which land use planning and real property development regulatory service fees are charged or assessed shall be established, maintained, updated and collected in accordance with the policies and procedures set forth in Attachment 1 to this Resolution.

SECTION 3. The City Council does not by this Resolution in any manner delegate its fee setting responsibilities under the Mitigation Fee Act to any other person.

SECTION 4. It is the intent of the Council that the policies and procedures regarding deposits of fees for land use planning applications and development services set forth in Attachment 1 to this Resolution shall revise and restate such policies and procedures. Accordingly, the policies and procedures contained in Attachment 1 shall supersede and control over any conflicting previously adopted or established policies and procedures related to deposits of fees in advance from developers in connection with land use planning applications and development services. The City Manager is directed to remove all references to such deposits from the Municipal Fee Schedule.

ADOPTED April 13, 2010, by the City Council of the City of Fremont by the following vote, to wit:

AYES: Mayor Wasserman, Vice Mayor Wieckowski, Councilmembers Natarajan, Harrison and Chan

NOES: None

ABSENT: None

ABSTAIN: None



\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Sr. Deputy City Attorney

## **Resolution No. 2010-23**

### **ATTACHMENT 1**

#### **CITY OF FREMONT POLICIES AND PROCEDURES FOR THE ESTABLISHMENT, COLLECTION, ADMINISTRATION AND DISTRIBUTION OF DEPOSITS RELATED TO LAND USE PLANNING APPLICATIONS AND DEVELOPMENT SERVICES**

1. **General Policy.** Deposits are not fees themselves so their establishment and administration are not subject to the provisions of the Mitigation Fee Act (California Government Code Sections 66000 et seq.). Actions taken by City staff in accordance with these policies and procedures shall not impose or change or extend any particular fee or charge amount fixed by the City Council.
2. **City Manager Authority.** The City Manager is authorized to establish, maintain, administer, update, collect and distribute deposits related to each city service for which land use planning and real property development service fees are charged or assessed in accordance with this policy and procedure.
3. **Standard Deposit Amounts.** The City Manager shall establish, maintain and update standard deposit amounts so that each deposit amount will approximate the expected total fee for a typical instance of the particular type of service activity requested by the applicant. The City Manager will only take action to establish or update a deposit amount when deposit recommendations are made jointly by the Community Development Director and the Finance Director based on the factors set forth in Section 5 below. The standard deposit amounts shall be shown on service fee schedules maintained by the Community Development Department.
4. **Alternative Deposit Amounts.** The City Manager shall also establish, maintain and update two alternative deposit schedules to approximate the total fee for those instances of each service where staff determines based on information provided by the applicant that the staff time required to render the particular service activity will be twenty-five percent (25%) less or more than the time required in a standard case due to the relatively simple or complex nature of the overall project. The alternative deposit amounts shall be shown on service fee schedules maintained by the Community Development Department. The Community Development Director is authorized to determine and set a higher required deposit in those instances where the project complexity is reasonably expected to cause the staff time to render the particular service activity to be at least forty percent (40%) more than the time required in a standard instance. Use of the alternative deposit amounts shall be authorized in accordance with the provisions of Section 9 below.
5. **Factors to Establish Deposit Amounts.** The following factors are to be considered when determining each standard deposit amount: (a) the objectives of this policy and procedure as stated in City Council Resolution No. 2010-23, (b) the staff time typically required to perform the service activity to which the deposit applies, (c) burdens on the City of

administering the deposit, and (d) the likelihood of collection difficulty or ease related to a particular fee because of the magnitude of the expected final fee amount.

6. Annual Review of Standard Deposit Amounts. The standard deposit amounts will be reviewed no less frequently than annually by the Community Development Director to determine if the amounts are appropriate. If the Community Development Director determines that adjustments in the standard deposit amounts are appropriate based on the factors set forth in Section 5 above he or she shall meet with the Finance Director to review any proposed adjustments to the deposit amounts.
7. Effective Date of Deposit Amounts. Once established, each deposit amount will remain fixed until a new amount is effective. Each proposed standard deposit amount will be computed and jointly recommended in writing by the Community Development Director and the Finance Director to the City Manager. The effective date for each new deposit amount (standard, complex, and simple) will be thirty days after the standard deposit amount is approved and established by the City Manager.
8. Collection of Deposits. The deposit appropriate to a particular project shall be collected along with the application for service. Notwithstanding the foregoing, the Community Development Director, with the concurrence of the Finance Direction and City Attorney, may authorize projects that pay the “complex” deposit amount or a negotiated deposit amount as described in Section 4, to pay the deposit based upon a schedule that closely correlates timing of payment with anticipated timing of city staff work. The Community Development Director is authorized to direct staff to refuse to process or provide any services in connection to a project for which a deposit is required and funds are uncollected.
9. Procedure to Use Alternative Deposit Amounts. Except as provided immediately below, City staff will require the project applicant to pay the standard deposit amount with each service application
  - (a) Whenever an applicant so requests and provides documentary evidence supporting the request and pays any fees set by the City Council for the review of such request, the Community Development Director will determine whether the requested service activities relate to a project meeting the criterion of a simple project as set forth in Section 4 above. If so, the applicant may pay the simple project deposit.
  - (b) If the Community Development Director determines that the services applied for relate to a project meeting the criterion of a complex project as forth in Section 4 above, then the Community Development Director will notify the service applicant of this determination and will require the applicant to pay the higher of the published complex project deposit or if city service activity is expected to be at least forty percent (40%) more than the time required in a standard instance, the deposit amount determined by the Director following negotiation with the applicant.

(c) The Community Development Director may delegate the authority to make the determinations described in this Section 9 to the Planning Director, the Building Official or the City Engineer.

10. Replenishment of Deposits; Authorization to Cease Work. City fees and charges for rendering the requested service will be setoff against the deposit as soon as practicable after services are rendered. When the deposit balance is reduced to ten percent (10%) or less of its original amount, the applicant must within thirty days of demand by the City deposit additional funds to bring the deposit back to its original amount. However, if the Community Development Director, (or the Planning Director, the Building Official or the City Engineer if authorized by the Community Development Director) determines that some lesser amount is sufficient to achieve the objectives of this policy and procedure given the expected services still to be rendered, then the applicant may deposit such lesser amount. The Community Development Director may direct City staff to cease all work on the applicant's pending project where the applicant fails to replenish a deposit within thirty days of the City's demand. The Community Development Director may direct City staff to cease work on all of an applicant's pending projects where the amount owed to the City on any project exceeds the sum of five thousand dollars (\$5,000.00) and the applicant has not paid such amounts within thirty days of the City's demand.
11. City's Right of Offset. Where a deposit is depleted but there remain unpaid service fees and charges and the applicant fails to replenish the deposit within thirty days of the City's demand, the Community Development Director, with the concurrence of the Finance Director and City Attorney, is authorized to setoff the amounts due against excess deposits paid by the same applicant for other service activities related to the same or to different projects. However, until the Finance Director's decision is rendered in any pending appeal regarding administration of the applicant's deposits, no offset will be taken against any excess deposits.
12. Deposit Refunds. Subject to its right of setoff, the City will refund to the applicant any remaining deposit balance within thirty (30) business days after the service activities to which the deposit relates are complete. At the applicant's request, deposit balances on completed projects may be transferred to cover the deposit requirements for another project.
13. Appeals. An applicant may appeal any determination made or any action taken by City staff relating to the administration of the deposits described by this resolution by filing a written notice of appeal with the Finance Director no later than ten (10) days after either a notice of determination is mailed or the action is taken. Failure to appeal within this time will render the determination or action final and conclusive. The appeal will be heard by the Finance Director whose decision on the matter will be final and conclusive and not subject to appeal. During the pendency of the appeal, if conditions warrant, the Community Development Director may direct city staff to suspend all work and, with the concurrence of the City Attorney, may refuse to issue any approvals or permits in connection with the applicant's project or projects which are affected by the pending appeal.

14. Deposit Agreement. The Community Development Director shall together with the City Attorney develop a general form of written deposit agreement to be executed by each applicant as a condition to accepting an application for services, documenting the terms and conditions related to the collection, administration, and distribution of each deposit or the series of deposits pertaining to a particular project. The form agreement shall incorporate the provisions of this policy and procedure relating to replenishment of deposits, the city's right of offset, refund of deposits and the applicant's right of appeal.