



CITY OF

NEWPORT BEACH

City Council Staff Report

May 23, 2023
Agenda Item No. 14

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2023-7 and Resolution No. 2023-30: Approval of the
Fiscal Year 2022-23 Fee Study Update, and Resolution No. 2023-31:
Approval of Amending Paramedic Subscription Program Fees

ABSTRACT:

The City of Newport Beach's consultant, ClearSource Financial Consulting (ClearSource), has updated the fees in the Community Development, Fire and Police Departments, following a cost recovery analysis. Staff has also identified other fee updates outside of the studied departments. In addition to the proposed fee updates, staff is recommending modifications to Newport Beach Municipal Code (NBMC) Sections 3.36.030 (Cost Recovery Percentages) to facilitate the changes to authorized levels of cost recovery required by the fee changes that are recommended at this time.

RECOMMENDATION:

- a) Conduct a public hearing;
- b) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- c) Adopt Resolution No. 2023-30, *A Resolution of the City Council of the City of Newport Beach, California, Adopting and Revising Certain Fees Within the Schedule of Rents, Fines, and Fees*;
- d) Adopt Resolution No. 2023-31, *A Resolution of the City Council of the City of Newport Beach, California, Modifying Resolution No. 2019-105 Relating to the Paramedic Subscription Program Fee*; and
- e) Waive full reading, direct the City Clerk to read by title only, and introduce Ordinance No. 2023-7, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Newport Beach Municipal Code Section 3.36.030 Related to Cost Recovery Percentages*, and pass to second reading on June 13, 2023.

DISCUSSION:

NBMC Section 3.36, City Council Policy F-4 (Revenue Measures), and Item 12 of the Fiscal Sustainability Plan (FSP), provide staff and the City Council with policy guidance related to setting cost recovery targets and updating user fees. User fees, or cost-of-service fees, are charged to a private citizen or group for services performed or provided by a government agency on their behalf. If the service primarily benefits an individual or group of people, then the burden of that cost should be borne by the person receiving the benefit. NBMC Section 3.36.030 sets the cost recovery for user fees at 100%, with the exception of the subsidized fees listed in Exhibit “A” of that same section, as well as those limited by California or federal statutes. A recommendation for less than a 100% cost recovery rate may occur when a service is beneficial to the community at large along with specific individuals or groups, and/or when there is an economic incentive, or disincentive, to do so. In these cases, another City of Newport Beach (City) revenue source – in most cases the General Fund – subsidizes the service. Any newly proposed fee or fee increase that is not approved by the City Council will, by default, be subsidized by the General Fund.

The Schedule of Rents, Fines, and Fees (SRFF) primarily includes cost-of-services fees, which are designed to recover the City’s cost to provide the related service. In order to establish fees on the basis of full cost recovery, it is necessary to determine the cost of services. Using well-established cost accounting methodologies, the City’s consultant, ClearSource, conducts a comprehensive review and update of the Citywide cost allocation plan and direct user fee calculations for each department on a rotating basis every three to five years. This year, ClearSource studied the following departments at staff’s direction:

- Community Development
- Fire
- Police

As part of this study, ClearSource met with City staff from each studied department to discuss the services provided, the annual volume for those services, and the staff resources and time estimates for delivering the related services. To factor in both direct and indirect costs, ClearSource calculates the department staff’s fully burdened hourly rate, which includes both internal administrative as well as citywide overhead costs. The fully burdened hourly rates are applied to the time estimates provided by staff and the fee is calculated. Consistent with the City’s round down policy and excluding Library Per Page Copies, all fees proposed that are \$5 or more are rounded down to the nearest dollar and all fees proposed that are less than \$5 are rounded down to the nearest quarter. Based on the results of the fee study, it is not uncommon for some fees to increase while others may decrease. The most common reasons for fees to go up or down are: 1) costs changing over time, most often increasing, 2) the staff performing the service changes, and/or 3) the amount of time to perform the service changes. Once the calculations are confirmed, department staff then recommends that the fee should either be fully recovered or subsidized. NBMC Section 3.36.030 Exhibit “A” subsidy changes are detailed in Attachments C and D.

In addition to the City's cost-of-service fees, the SRFF includes rents, fines and penalties, and other charges imposed by the City or mandated by the State of California. The amount of these charges is determined in a variety of ways, most commonly market surveys when not mandated by a higher level of government. Where changes are recommended for these non-cost-of-service components of the SRFF herein, a description of the fee methodology and the reason(s) for a recommended change are provided.

On April 13, 2023, staff presented the fee study updates to the Finance Committee for consideration. The Finance Committee recommended the fee updates as presented move forward for City Council consideration.

The remainder of this report focuses on how studied fees are changing. Summaries and a before and after illustration of each department's studied fees can be found in Attachment A.

Community Development Department

The department administers the City's General Plan, as well as the City's zoning, building, subdivision, and environmental regulations, to ensure orderly physical growth of the community. Program activities include advance and current planning, building, plan review, permit issuance, and inspection; among other things not related to cost-of-service fees. The Community Development Department (CDD) was last studied in FY 2019-20. Prior to that study, in 2016, CDD converted valuation-based residential construction permits and selected deposit-based planning permits to flat fees. There are no changes proposed to this flat fee structure with this current study.

Building – Fees in this division are collected to recover the costs associated with plan review, permitting and construction inspection for new and remodeled buildings and other structures. The existing permit extension fee was clarified to include permit and plan check extensions. While staff is not proposing any new fees, the fees proposed reflect an approximate 3% increase to align the fees with the City's current cost of providing these services.

Planning - In reviewing the overarching types of services provided by the Planning Division, staff proceeded with categorizing activities and staff time in services related to current planning and advanced/long-range planning. Fee-related planning activities focus on the review of development projects, condition compliance, and counter permits including, but not limited to subdivisions, use permits, administrative permit, permit modifications and adjustments, sign permits, lot line adjustments/mergers, variances, etc. The fees proposed reflect an approximately 5% increase to align the fees with the City's current cost of providing these services. Adjustments vary depending on the specific fee category.

In this department, two new fees are proposed:

1. **Litigation Defense Fee.** This fee is proposed to be based on actual cost, on a time and materials basis, and is intended to serve as a pass-through fee that enables the City to fully recover its costs for projects that require external or internal support from a legal capacity. In cases where legal staff time is incurred, staff proposes utilizing the full hourly and burdened rate of personnel as well as the City and departmental overhead rates established by the most recently completed cost allocation plan in the fee calculation.
2. **General Plan Maintenance Fee.** The fee will be applied as 5% of all new construction, additions and alterations for residential and commercial project building permit fees. Amounts collected from this fee are intended to provide roughly \$170,000 per year that should be dedicated to costs associated with maintaining and updating the City's General Plan and support documents. California Government Code Section 66014 states that fees collected by an agency, "...may include the costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations." Every county and city in California is required by State law to have a General Plan, and the plan is required to be updated on a regular basis. The General Plan discusses the City's goals, policies, and implementation actions regarding all future development. The Zoning Ordinance establishes the development regulations to implement the General Plan and must be consistent with the plan. Cities and counties throughout California often attempt to recover portions of the costs of updating and maintaining these plans through fees collected on various development projects. As the list below indicates, a similar fee is currently collected by several cities in Orange County and throughout California. The list is not intended to be comprehensive:

- | | |
|-------------------|--------------------|
| • Fountain Valley | • Huntington Beach |
| • Orange | • Placentia |
| • Seal Beach | • Roseville |
| • Los Angeles | • San Diego |
| • Sacramento | • San Leandro |
| • San Jose | • Ventura |

The proposed 5% surcharge is estimated to recover 12% of the City's estimated ongoing and future costs related to this core service area. Attachment D modifies NBMC Section 3.36.030 Exhibit "A" to reflect the proposed 12% cost recovery.

In addition, based on direction from the Finance Committee and City Council as part of the FY 2021-22 Fee Study, ClearSource and staff completed a comprehensive review of the structure of the City's types of appeals and the corresponding cost recovery for both successful and unsuccessful applicants.

Generally, and at the recommendation of the Finance Committee and the City Council, the City has included a cost recovery of less than 100% for both successful and unsuccessful applicants to not discourage potential appellants from exercising the right of appeal due to the fee(s) being cost-prohibitive. The planning application appeal fee (both to the Planning Commission and the City Council) is the only appeal fee remaining that is not refunded if the appeal is successful. On February 23, 2023, the Planning Commission recommended modifying NBMC Section 3.36.030 Exhibit "A" to include the provision to recover 0% of planning application appeals to the Planning Commission and the City Council in cases where the applicant is successful. To further align the structure of the planning application appeal fee with the City's other appeal fees in cases where the applicant is unsuccessful, staff is also modifying NBMC Section 3.36.030 Exhibit "A" to reflect a cost recovery of 50% in lieu of a flat fixed dollar amount (that was previously approximately 50%) for planning application appeals to the Planning Commission and the City Council. These proposed changes are reflected in Attachment D.

Community Development staff met with the Building Industry Association (BIA) to discuss the proposed fees, and the BIA communicated no concerns with the proposed fees.

Fire Department

The Fire Department provides 24-hour protection and response to the City's residents, businesses and visitors. The Fire Department is comprised of the following: Emergency Medical Services, Fire Operations, Junior Lifeguards, Fire Prevention, and Lifeguard Operations. The department's cost-of-service fees were last studied in FY 2019-20, except for the Fire Prevention Division fees which were studied last fiscal year.

Emergency Medical Services (EMS) - The EMS division delivers high-quality emergency medical care to the community. First responders provide timely response, evaluation, treatment and transportation to a local hospital when necessary. Primary fees within EMS are the fees charged for the Fire Engine and Paramedic Unit responding to 911 calls and evaluating and treating a patient. The fees primarily fall into two categories: Advanced Life Support (ALS) or Basic Life Support (BLS). Overall, the ALS with Transport and BLS with Transport fees are both proposed to increase by 2% to align both transport fees with the current cost of providing these services. The increase was anticipated to be of a marginal nature and more of an inflationary adjustment since these fees were more significantly adjusted as part of the FY 2019-20 fee study to capture the vehicle and equipment cost along with the cost associated with the ambulance billing service and disposable medical supplies.

Newport Beach residents and businesses have the option to participate in the Paramedic Subscription Program, known as Fire Medics, to protect themselves and their family, or employees and patrons against potential costs related to an unexpected medical emergency as outlined in NBMC Section 5.60.020. Staff is proposing to increase this fee from \$60 to \$84 per year, which results in a net increase of \$2 per month, from the current \$5 to \$7.

This increase is due to the increased cost of transport services. The last subscription service fee increase occurred in 2015 by way of Resolution No. 2015-77, which increased the fee from \$48 per year to the current fee of \$60 per year, with a net increase of \$1 per month. A separate resolution (Attachment E) will accompany the fee resolution presented to the City Council to amend resolution No. 2019-105 to modify this program fee.

Fire Operations/EMS – These fees are only charged when Fire and EMS staff are requested to provide safety or service for activities that do not qualify for the special event hourly rates. There is one new fee proposed for a Fire Captain Unit, which is comprised of a Fire Captain and a suburban vehicle. By way of this fee, staff can retain operational flexibility when dispatching units and ensure the full cost of service can be recovered when a Captain Unit is sent.

Fire Prevention – The Fire Prevention fees were most recently studied in FY 2021-22 and previously in FY 2019-20. While the fees in this division were not ordinarily due to be studied last fiscal year, these fees were reviewed due to their previously low City cost recovery. As part of the changes resulting from the fee study last fiscal year, the fees in this division were adjusted to 100% cost recovery based on a survey regarding cost recovery percentages for similar services by other Orange County fire agencies.

There are two new fees proposed related to fire prevention inspections. In reviewing the existing fees, staff identified certain inspections where the fee collected is disproportionate to the time spent on the inspection. The inspections that warrant this additional time involve buildings that have a larger number of floors (whether above or below ground). The two fees are both proposed at a fee of \$455 as the amount of time and the staff completing the inspections are consistent between the two services and are designed to capture the additional inspection work that is already occurring, yet not being fully recovered, for multi-level buildings as listed below:

1. Fire Prevention Inspection of a Fire Alarm System (NFPA 72): Per Story > 2 stories (includes above and below ground stories)
2. Fire Prevention Inspection of Commercial Fire Sprinkler System (NFPA 13): Per Story > 2 stories (includes above and below ground stories)

As part of the fee study, a survey of other fire agencies was conducted to consider how the cost recovery for similar buildings is captured, which yielded that the Orange County Fire Authority has a comparable fee structure with an additional fee for each additional riser or floor in buildings greater than three stories. Similarly, these can be above or below ground.

An example of when these fees would be applicable is if a senior care facility required inspection and structurally includes three stories above ground and one story below ground. The fee would be charged for the two stories above ground and the one story below. The proposed \$455 fee would account for the two hours of an inspector's time per story and more accurately reflect the inspection time realized at these facilities.

Police Department

The Police Department provides high quality police services to our community to maintain the quality of life valued by those who live, work and recreate in Newport Beach. The Patrol/Traffic Division is the front-line defense against criminal activity and quality of life concerns, including parking enforcement, animal control, and detention services. The Detective Division investigates thousands of reports taken by the Police Department each year. The Support Services Division offers administrative, technical, and fleet support to the department. The fees in this department were last studied in FY 2019-20. A majority of these fees are recommended for only minor inflationary adjustments, typically amounting to \$10 or less, to align the fees with the current cost of providing these services.

Similar to the efforts detailed above related to Fire Prevention fees, there were administrative updates to clarify fees.

For Fingerprinting and Citation Sign-off fees, staff is recommending the City recover less than 100% of the full cost of these services as reflected in Attachment D.

There are several new fees proposed related to Animal Control as follows:

1. Adoption Fees – staff is proposing two new fees relating to the adoption of a senior dog and a senior cat at \$70 each respectively. For purposes of the adoption fees, an animal is considered senior if the animal is over eight years old. Staff is recommending recovering less than 100% of the cost of this service as outlined in Attachment D to encourage adoptions of older animals.
2. Miscellaneous Animal Inspection Services – Court Ordered Inspections. Staff is proposing a new fee in this category to cover instances where inspections are court ordered. The proposed fee is \$155 which is consistent with the existing fees in this category relating to animal inspection services.
3. Owner Turn-In Fee – Unaltered Animal. Staff is proposing this new fee at an amount of \$200, which is double the Altered Animal Owner Turn-In Fee, as previously there was only one fee relating to animals that are turned into the shelter. However, animals that are unaltered require additional staff time and incur additional medical expense that has otherwise been subsidized by the City. It is staff's recommendation that the owner turning the animal in to the shelter should cover the costs of these expenses.
4. Declared Dangerous Animal Fee. Staff is proposing a new fee of \$248 for the staff time to conduct inspections, evaluate and permit, and maintain the record related to animals that are declared dangerous. When a court declares an animal dangerous, staff must complete an initial inspection and follow up review. The proposed fee is in addition to the base animal license fee.

Other Updates

Even when a department is not scheduled for a comprehensive fee study, occasionally, operations will change enough that the non-studied departments will request one or two fee study changes for consideration and adoption, or there are administrative updates to clarify fees (e.g., name changes, removing fees, recategorizing fees, etc.). The SRFF included with this report reflects administrative updates to fees in an effort to simplify the presentation of the fees as well as to ensure the SRFF correctly captures all fees related to current operations.

As part of this study and in an effort to present a comprehensive and thorough update on the City's fees and current operations, staff considered the following additional updates outside of the departments scheduled to be studied.

The Finance Department is proposing to pass through parking pay-by-cell fees. The City has offered the option to pay for parking by mobile phone for over 10 years, and absorbed the transaction fees to increase customer adoption rate. This method of payment has increased in popularity, and, in FY 2021-22, represented 34% of all parking transactions in the city. For this fiscal year, the adoption rate has increased to just over 40%. Most cities pass through the transaction fees to the customer. The transaction fees will range from 15 cents to 25 cents per transaction. If the customer does not choose to pay for parking by mobile phone, they can still pay through the pay station without a transaction fee.

CPI Updates - The applicable rental fees within each studied department, as well as all applicable fees listed in the SRFF that are subject to CPI increases based on prior resolutions, are due to be increased by CPI effective July 1, 2023. The City's methodology in calculating the change in CPI is by using the U.S. Bureau of Labor Statistics March CPI of the prior year to the March CPI of the current year. The change in CPI for this period of time is 3.7%. Subsequent to July 1, 2022, and for the applicable cost-of-service fees within each of the studied departments as part of this fee update, fees will again be increased annually in future years by the percentage change in CPI.

FISCAL IMPACT:

The effective dates of these updates will be next fiscal year and described in Resolution No. 202330. Staff estimates that these fees, if approved by the City Council as recommended, will amount to approximately \$620,000 in additional revenues to the General Fund. However, this projection does not account for any fees where volume statistics are unavailable. The City Council's policy of ensuring regular review of the City's cost-of-service fees and adequate cost recovery will continue to ensure adequate cost recovery from users of the City's fee-related services. This then facilitates the redirection of general tax revenue currently subsidizing fee-supported services to maintaining and enhancing non-fee supported services and programs.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to Government Code Section 66018(a) (two publications with at least five days intervening between the two dates), Government Code Section 66016(a) (notice mailed at least 14 days prior to the meeting to any interested party who files a written request) (notice mailed to Building Industry Association of Southern California, Southern California Edison, and Southern California Gas Company on March 29, 2022), and the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Fiscal Year 2022-23 Studied Department Changes
Attachment B – Resolution No. 2023-30
Attachment C – Ordinance No. 2023-7
Attachment D – Redline Amended Newport Beach Municipal Code
Attachment E – Resolution No. 2023-31