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CF09-0600 S50
ITEM 1, COUNCIL 6/30/09
CF09-0969
ITEM 40, COUNCIL 6/30/09
 M. Kostrencich

**STATEMENT of J.H. McQUISTON on
 AMENDMENTS to FEES for PLANNING APPROVALS**

Honorable President and Members of the City Council:

1. I endorse the effort of the Planning Department to establish fees based on the actual cost of the service performed.

2. However, there is more to establishing a fee than basing it on the present staffing and work plans, or even on an "average" cost. The fee for each case must be "reasonable"; "reasonableness" was not proven.

In my legal career, I participated in many lawsuits whose gravamen was the assessment of a fee. Every Court awarded only a "reasonable" fee. It almost always was less than the fee requested, although the fee requested was well-documented, because the fee was not supportable by required facts.

To proceed without factual proof of "reasonableness" will incur a severe penalty for the City.

Article 13 D of the California Constitution prohibits the City from charging a fee larger than the actual cost of the service rendered. A larger "fee" is a "tax" which must be approved by a vote of the people.

The City cannot prove that an application to Planning accumulates a cost-certain at this time. It will be some time before such specific costs are retrievable from Departmental data. The required level of *expertise* is not set forth and justified. A court will deny fees if not factually-justifiable case-by-case.

California statutory law restricts the reach permitted a Planning Department's exercising the "police power" exception to Constitutional protections. There is substantial evidence that Planning reaches farther than that permitted for planning approvals. A court will deny fees for such "unsolicited" services.

California Constitution, and the United States Supreme Court, prohibit fee-discrimination by class for an identical service. **The proposed fee schedule plainly discriminates by class and effort, so is prohibited as proposed.** A court will nullify the fee.

3. Planning services now exceed in part the statutory requirements. Planning performs "unnecessary" examinations and studies, for Council, or for applicants wishing to "evade" statutes. These examinations and studies are unreasonably-magnifying the Departmental cost. In this time of fiscal crisis, Planning must review the services it performs; it must shed services not part of its statutory core where dispensable.

This Council should wisely send the matter back to the Department for factual backup, plus a description of core-services to be delivered. The Council thereafter may set *policy, tasks, staffing, and fees* properly.

Then **Planning must receive appropriate fees for delivering appropriate services, not less than their cost.**

Respectfully submitted,

c: Interested parties