

CHAPTER 155: REIMBURSEMENT OF PROFESSIONAL FEES AND COSTS

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§ 155.01. STATEMENT OF POLICY.

It is hereby declared to be the policy of the City to obtain reimbursement of the professional fees and costs, including legal advertising and recordation fees, it incurs in obtaining advice and other professional services in connection with consultation concerning, review, evaluation of and establishment or implementation of official actions with respect to an application by a developer for a land use approval or financing incentive for a project within the City. It is also the policy of the City to limit its reimbursement requirements under this chapter to the actual cost to the City of the professional services, advertising and recordation of documents required for a given project.

(Ord. 2010-18)

§155.02. DEFINITIONS.

The following terms shall have the meanings specified in this section throughout this chapter:

DEVELOPER means an applicant for an official financing incentive or official land use action before any council, agency, board, commission or official of the City.

OFFICIAL LAND USE ACTION means a zoning or rezoning, the establishment or amendment of a Planned Unit Development (“PUD”), Site Plan Review when required or allowed by City Ordinance, subdivisions or re-subdivisions, variances of use, annexation, amendment of the Comprehensive Plan of the City, amendment of the Municipal Code when requested by a developer, utility (including but not limited to public utilities pipelines, railroads and optic cable providers) relocations and other utility work including, but not limited to construction and expansion of easements and rights of way.

(Ord. 2011-38, § 6; Ord. 2012-35, § 1)

OFFICIAL FINANCING INCENTIVE ACTION means the creation, expansion or alteration of the boundaries of a tax increment financing allocation area, the creation or alteration of an economic development area or redevelopment area, any action required to implement real or personal property tax abatement, the establishment of a public-private partnership under state law, and the adoption or amendment to a development agreement between the City and the Developer for a project.

PROFESSIONAL means an attorney, engineer, or financial consultant engaged by the City for the purpose of rendering advice, consultation and other professional services to the City or developer related to an application or project. This term also includes the City Engineer, Assistant City Engineer and the City Attorney, but only if they are compensated on a *per diem* basis.

PROJECT means a proposed construction, improvement or use of land within the City for which a developer seeks one or more official land use actions or official financing incentive actions.
(Ord. 2010-18)

§155.03. FEES AND COSTS SUBJECT TO REIMBURSEMENT.

A Developer who applies for an official land use action or an official financing incentive action, as defined in [§155.02](#) of this chapter, shall reimburse the City for the actual fees and costs charged for the services of professionals engaged by the City to provide consultation, advice, the preparation of legal documents, engineering or technical drawings or analyses, and financial statements and analyses necessary or desirable in the review and evaluation of such application by any board, council, commission, or official of the City. In addition, the Developer shall reimburse the City for the actual cost of any legal advertisements imposed by newspapers and recording fees of the County Recorder for official documents in connection with official land use or financing incentive actions taken with respect to the application of the developer. Said reimbursement shall be governed by and limited to the amounts specified in the reimbursement agreement between the City and the applicant required under [§155.05](#) of this chapter, and shall be subject to the deposit and payment requirements contained in [§155.06](#) of this chapter. The amounts subject to reimbursement under this chapter shall be in addition to the payment of the fee for financial impact analysis in connection with the review of tax abatement applications, or any other fees required by law.
(Ord. 2010-18)

§155.04. NOTICE TO APPLICANTS.

Whenever the City Planner, Zoning Administrator, Director of Development, City Engineer, Assistant City Engineer or City Attorney shall determine that a person desiring to apply for an official land use action or official financing incentive action is a developer of a project within the definitions of this chapter, such official will cause written notice of the requirements of this chapter to be hand delivered or delivered by mail, facsimile or e-mail to such person. Such official will give said notice as soon as practicable after the person makes or inquires of such official concerning an application for one or more of such actions. The notice shall be accompanied by a copy of the provisions of this chapter. Said official shall respond to questions

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posed by the person desiring to apply, and assist in the preparation of the reimbursement agreement and other matters related to the implementation and enforcement of the agreement.
(Ord. 2010-18)

§155.05. REIMBURSEMENT AGREEMENTS.

No application for an official land use action or official financing incentive action may be considered by any board, council, commission, or official of the City without the prior execution of a reimbursement agreement pursuant to this section and payment of deposit pursuant to [§155.06](#) of this chapter. Prior to the consideration of an application for an official land use action or official financing incentive action by a developer of a project within the definitions of this chapter, the City Planner, Zoning Administrator, Director of Development, City Engineer, Assistant City Engineer or City Attorney shall determine the likely requirements of the City for professional services in the review and evaluation of the application and shall solicit estimated total fees and charges from each of the City's professionals whose services will be required, in writing, on a "not to exceed" basis. The Clerk-Treasurer shall provide to such official an estimate of legal advertising and document recordation fees that will be required for the application. Such official will prepare a reimbursement agreement in letter form, using a form to be prepared by the City Attorney, specifying the estimated "not to exceed" professional fees and costs to be incurred by the City based upon such written estimates, including legal advertising and recordation fees, and requiring the developer to agree to reimburse the City for same in the manner required by this chapter. In the event it is determined that such fees appear to be insufficient as estimated, such City official and developer shall enter into good faith negotiations to amend the amount authorized for reimbursement in the agreement or other conditions contained therein. The agreement shall also require the payment of the deposit required under [§155.06](#) of this chapter, and provide for return of unused deposit or supplemental billings as also authorized by that section. Reimbursement agreements under this section shall contain provisions binding the City and developer, providing for enforcement thereof, including the recovery of attorney fees and costs of suit, and shall be executed by the developer and the above-named official of the City preparing the agreement.

(Ord. 2010-18)

§155.06. RECEIPT AND DEPOSIT OF FUNDS; FINANCIAL ARRANGEMENTS.

Upon execution of the reimbursement agreement required by [§155.05](#) of this chapter, the developer shall deposit with the Clerk-Treasurer of the City a sum equal to one-half of the total estimated professional fees, legal advertising and recordation fees and costs specified in the agreement. No consideration shall be given by any board, council, commission or official of the City to the application of the developer until such deposit is paid. Before the final action of the City board, commission, council or official on the developer's application for official land use action or an official financing incentive action, the City shall give written notice to the developer of the final sum of all fees and costs for professional services incurred by the City in evaluation and review of the application to the developer, and the developer shall pay the City, in reimbursement thereof, the balance of all such fees and costs incurred less deposits previously paid by the developer. No final action shall be taken on the application until such payment is made. If the sum of all deposits made by the developer with the City exceed the sum of all of such professional fees and costs incurred by the City, the City shall promptly reimburse the balance to the developer. If, after final action is taken, fees or costs are billed to the City for professional services or legal advertising or recordation fees not previously billed, the applicant

shall reimburse the City for same promptly upon written invoice to the developer by the Clerk-Treasurer.
(Ord. 2010-18)

§155.07. ENFORCEMENT AND DAMAGES.

The City shall be entitled to enforce the provisions of this chapter, including the provisions of any reimbursement agreement provided for in this chapter, by any remedy at law or in equity, including, but not limited to, injunction, damages, special performance and the recovery of attorney fees and costs.
(Ord. 2010-18)

§155.08. LIMITATIONS AND WAIVERS.

No amount paid by any developer in reimbursement of the City under this chapter shall exceed the actual sum of professional fees and costs, legal advertising and recordation fees incurred by the City. For good cause shown, the Board of Public Works and Safety of the City may reduce or waive any of the obligations imposed upon a developer by this chapter. The term “good cause” means the existence of a severe financial hardship upon the developer if the provisions of this chapter were applied without change, or the imposition upon a non-profit or governmental entity of a substantial financial burden that would interfere with its service to the community. The determination of the Board of Public Works and Safety shall be final and binding.
(Ord. 2010-18)

§155.09. SEVERABILITY.

This chapter shall be deemed to be severable such that, in the event any court determines that any provision of same is unenforceable, the balance of the chapter shall be given effect to the extent practicable.
(Ord. 2010-18)