

DATE: 3/12/24

TO: COUNCILMEMBERS

FROM: CITY MANAGER'S OFFICE

SUBJECT: COUNCIL Q&A FOR MARCH 12, 2024 CITY COUNCIL REGULAR MEETING

Study Session (fees):

- Will the *Sheetz v. El Dorado County* case affect these fees?
Answer: This case was argued in the US Supreme Court on January 9, 2024. A decision could be out this summer. **Background of the case:** Under the unconstitutional-conditions doctrine, “the government may not deny a benefit to a person because he exercises a constitutional right.” The U.S. Supreme Court in *Nollan* (1987) and *Dolan* (1994) recognized that land-use permit applicants “are especially vulnerable to the type of coercion that the unconstitutional conditions doctrine prohibits.” Under those cases, the government may condition approval of a land-use permit on the owner’s dedication of property to public use if the government can prove that an “essential nexus” and “rough proportionality” exist between the demanded property and the impacts of the owner’s project. In *Sheetz v El Dorado County*, the superior court ruled against *Sheetz*, concluding that legislative exactions are exempt from *Nollan/Dolan* review. The California Court of Appeal affirmed. It is important to note that the Fees being discussed at this study session are “Cost for Service”. The Fees that are being challenged in *Sheetz v. El Dorado County* are “Development Impact Fees” which are different and being analyzed separately; those findings will be presented to the City Council separately in April 2024. The Fees presented in this study session are to cover the costs associated with the review of development projects, not impacts associated with a project or for off-site improvements.
- EV Chargers: What is a “terminal EV charging port?” Is the proposed \$300 fee for a permit to install a dryer-type 240v plug? Is it for something else?
Answer: EV charging ports are for Electric Vehicles only, the City is only proposing a specific fee for that and not all 240v plugs.
- If the Council adopted the fee schedule proposed by staff and the consultant, how much of the \$1.9 million under-collected by the City will be recovered?
Answer: The proposed cost for services would collect 100% of the \$1.9 million that is currently under collected annually.
- Please provide projections for how much money each of the proposed fees is expected to generate and how that number was calculated. This will be useful if the Council wants to modify the fee schedule proposed by staff. (For instance, if the Council wanted to forego an EV Charger fee, how much cost recovery would the City forego and what other fees could the Council choose to increase (and by how much) in order to make up for that shortfall?)

Answer: Fees starting on Page #13 of the PDF (Attachment 2) identifies in the second column "Total Cost" which is the maximum fee the City Council can charge for any fee. The City Council cannot increase the fees beyond the calculated number of "Total Cost". The fees generated from Solar, Electric Vehicle Charging and other associated Sustainable Improvements only account for a small portion of annual revenue generated by the Development Services-Building Division. Actual numbers would need to be independently calculated, and staff can return separately with those.

- Water Heater Permit - I understand that the consultant has done a thorough analysis of expenses as a basis for changing our existing fees. However, the Water Heater Permit is a proposed new fee, with no background given. The consultant does recognize that cities may set fees below full recovery so that people will comply - and they use "water heater permit" as an example where, if the fee is too high, people might just not get one. Nothing in the report says what "full recovery" would be. The consultant report says this would be a "new" fee -- but I believe we currently require a permit -- so is it currently set at \$0?

Answer: The full recovery of all calculated fees for the cost for service starts on Page #13 of the PDF (Attachment 2) identifies in the second column "Total Cost" which is the maximum fee the City Council can charge for any fee. The City of Los Altos does issue Water Heater Permits, but those have always been calculated based on Valuation which means that the permit cost can vary from permit to permit for the same installation. The Permit is new, because the City does not currently have a set and flat fee for Water Heater Permits.

- Water Heater Permit - Is the proposed \$150 full recovery - or what would be full recovery?

Answer: The maximum cost for a Water Heater Permit the City can charge is \$178, as reflected on Page #14 of the PDF (Attachment 2). Staff proposes \$150 within the Agenda Report.

- Historic Properties Permits (3 proposed) - The consultant report indicates that the department, not the consultant, has suggested new fees that affect historic properties (Historic Alteration, Historic Designation, Mills Act Contract). Which properties would be affected for the Alteration permit -- those designated as landmarks, or those on the HRI, or ...?

Answer: Pursuant to Section 12.44.100 of the Los Altos Municipal Code:

- A. For historic landmark properties, a historical alteration permit (Section 12.44.150) is required in order to alter, demolish, remove, relocate or change any exterior architectural features of the designated landmark structure(s), or remove or relocate any improvements, structures or natural features that contribute to the integrity or the historic significance of the historic landmark.
 - B. For historic resources listed on the historic resources inventory, an advisory review (Section 12.44.140) is required in order to alter, demolish, remove, relocate or otherwise change in any manner any exterior architectural feature or natural feature that contributes to the integrity or the historic significance of a historic resource.
- Historic Properties Permits - For properties under Mills Act, would these fees be reportable and count against the money owners must spend for rehabilitation, etc. to balance the taxes saved under Mills Act? If so, it seems this would reduce the amount that the owner would otherwise be obligated to spend on rehab. Is that correct?

Answer: No. Permit fees would not be deducted from the required improvements. This is a cost of service that reviews and approves the alteration/modification/improvements to historic properties.

- Historic Properties Permits - How is the Alteration permit different from other permits that would need to be pulled for work? What, specifically, does staff need to do special for an historic "alteration" that isn't covered by other permits?

Answer: Pursuant to Section 12.44.140 of the Los Altos Municipal Code:

- A. For projects that require a historical alteration permit, the historical commission shall complete its review and issue a decision at its next available scheduled meeting. In order to approve a permit, the commission shall find that:
 1. The project complies with all provisions of this chapter; and
 2. The project does not adversely affect the physical integrity or the historic significance of the subject property.
 3. The project is in compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties
- B. If the historical commission approves the historical alteration permit, or approves such permit subject to conditions, the development services director shall issue the permit in accordance with the recommendation, provided that no other approval is required under this code. In the event the historical commission recommends denial of the permit, the development services director shall notify the applicant that the requested permit will not be granted.

The information listed above is a requirement of the Los Altos Municipal Code. The City does not collect any fees for Historic Alteration Permits which takes several hours of work, and presentation to the Historic Commission.

- Historic Properties Permits - If I recall correctly, the property owner bears the cost of the report(s) usually required to gain Landmark and/or Mills Act status. Do we have a general idea of the cost of such studies? The permits being suggested would be in addition to those costs and this might be a consideration when we take up the policy question of whether to impose these new fees.

Answer: As with all special studies, all applications bear the cost in addition to permit fees, this is standard for all development proposals in all jurisdictions.

- Historic Properties Permits - What time period and number of instances of such activities did the consultant use in setting the suggested fees shown in the staff report (how many historic alterations that would have required the suggested new permit; how many new Designations; how many new Mills Act contracts)? I am concerned that they could be based on very few, costly examples, and not be representative.

Answer: The number of permits is not how an individual permit fee is developed; it is based upon "Actual Costs" associated with the review of the permit. Actual staff time is determined under conservative time assumptions of how long a permit takes to review, approve, and present for formal approval to a commission.

- Historical Properties Permits - Is there a reason there is no significant discussion of these proposed fees and no comparative information from other cities, in the consultant's

report? Can the consultant estimate how much of the under-charged work is attributable to historic properties that would be covered by these fees?

Answer: Permit Fee/Cost for Service is not determined by comparison cities, these are independent analysis based upon the actual work performed based on Local Land Use Regulations. The Regulations in Los Altos have established various requirements which result in several hours of staff and commission time, the fees that have been calculated and presented within the report are the actual costs for service. Any mention of comparison cities is for reference to help explain and give a base understanding for how in-line or out-of-line the existing fees are; some jurisdictions do not have Historic Alteration Permit requirements at all, so no comparison would be required. The Fees calculated are in relation to Local Land Use Regulations.

- Home Occupation Permits - What is this? It is a proposed new permit, but there is no explanation in either the consultant or staff reports.

Answer: Pursuant to Section 14.02.070 of the Los Altos Municipal Code:

"Home occupation" means an occupation carried on in a home, provided no assistants are employed and provided such use is conducted within a dwelling and carried on by the occupants of the property, and is clearly incidental to the residential use of the dwelling, and does not change the residential character or appearance of the dwelling or adversely affect the uses permitted in the residential district of which it is a part, and wherein no product, other than those produced on the premises, is sold and no mechanical equipment is used, other than that necessary for domestic purposes, and where there is no indoor or outdoor storage of materials, equipment, and/or supplies, other than those necessary for domestic purposes.

Home Occupations are for small business enterprises in residential dwellings, that do not affect or change the residential uses onsite. These have been allowed for decades in all residential zoning districts and are processed in tandem with a Business License.

This is a Fee since the city has not previously had this fee but has to by regulation process applications for this.

Agenda Item 2 (Sewer vacuum truck):

- Resolution: After the first WHEREAS, replace “the vehicle” with “the Vac-Con five-yard combination sewer cleaner mounted on a freightliner 114SD plus 4X2 chassis (“proposed vehicle”)”

Answer: The resolution will be revised to reflect this comment.

- Per our agreement purchase agreement policy, did we have a full RFP and did we secure 3 bids.

Answer: The City did not need to use an RFP or bidding process. The City’s purchase policy on page 7 provides that “the City Manager, where advantageous to the City, may, by cooperative purchasing agreements or arrangements, purchase supplies, equipment and materials through legal contracts of other governmental jurisdiction of public agencies without further competitive bidding by the City.”

- Does cost of the new vehicle include a warranty and maintenance contract?

Answer: The Vac-Con portion of the truck has a one-year warranty. The chassis has a warranty too, but the warranty length varies 1 to 3 years depending on the truck's part. The cost of the new truck does not include a maintenance contract.

- What are we doing with the existing flushing truck?

Answer: The old truck would be auctioned off.

Agenda Item 4 (CBRT):

- Can you please provide and post a copy of the initiative?

Answer: The following is a link to the Ballot Title and Summary:

<https://static1.squarespace.com/static/60369b9117d56546d00fa01e/t/6227ede5909bfd519ce98ced/1646783973838/Title+and+Summary+%2821-0042A1%29.pdf>

And the following is a link to the full measure:

<https://oag.ca.gov/system/files/initiatives/pdfs/21-0042A1%20%28Taxe%29.pdf>

Agenda Item 5 (Acceptance of \$200,000 grant):

- If the grant funds will be deposited into the general fund, then why is the City advancing costs from the Downtown Parking Fund?

Answer: The City will be advancing and reimbursing costs from the Downtown Parking Fund on this project. The "General Fund Grant" is the name for this type of grant from the state.

- Can you please provide a map showing the designated site for the e-bike parking and improved lighting?

Answer: City staff is still working to finalize locations, especially depending upon the type of light selected.

Agenda Item 7 (LAYC Remodel):

- When will the remodel be finished? When will staff be moving into the building?

Answer: Construction is expected to be about 1 year. Staff will begin moving in once the City has deemed the project complete and received occupancy approval.

- Why does this project have a 15% contingency? Isn't a 10% contingency standard?

Answer: 15% contingency is still within industry standard for the region given the age of existing building and number of trades involved in the improvements. Furthermore, the project is required to upgrade several service utilities including electrical, fire, and domestic water. All of these utilities occur in a very tight space, constrained by the orchard and by existing utility mains that serve the other buildings in the area including PD, City Hall and the Library. This may require field adjustments during construction.

- Is there any intent to change the exterior?

Answer: Improvements will be made to the exterior of the building, but they will not change the existing aesthetic. The exterior walls, siding, and roofline will be unchanged. The location and style of windows and doors will generally remain the same as well. A solid wood fence will be added to the south side of the building to screen existing and proposed utilities. Similarly, a small segment of solid wood fence will screen a portion of the west side of the building. The north and east entrances will receive new ADA access improvements.

- Please confirm that any changes to exterior patios would not encroach onto the historical orchard?

Answer: Exterior improvements on the west side will not change the footprint of the building. The existing and proposed utilities on the south side of the building will increase the facility's footprint by approximately twenty feet. It is important to note that the Heritage Orchard does not have boundaries that can be "encroached" upon in the manner asked in the question. Similar to the sidewalk(s), the recorded access easement, the recently placed irrigation lines, the upgraded water controllers, the newly installed brick patio and umbrella, past placement of picnic tables, the City Hall and Library HVAC controls, or other items that exist within the Heritage Orchard boundaries, the proposed redesign for the LAYC building will be completed in full compliance with State and local laws and do not encroach upon the Heritage Orchard.

- Please clarify the change of windows. (Construction of bid alternate number 1 windows - is this for new double pane windows or other amenities?) What style and change can we expect to see on the windows?

Answer: The base bid includes replacing only the windows that are impacted by construction; which is approximately 60% of all windows on the building. The bid alternate #1 is to replace the remaining 40% of windows. The windows will be double-paned and meet the current performance standards of the California Energy Code. New windows improve operational efficiency through thermal regulation and maintenance efficiency through reduced service demands.

Agenda Item 8 (Electronic Signatures):

- In addition to electronic signatures will our previous practice of utilizing wet signatures still be in place?

Answer: For agreements the city currently uses electronic signatures. For resolutions, ordinances and minutes, city staff will continue gathering wet signatures and will only use electronic signatures in cases of emergency. During the pandemic, it was difficult for staff to meet with the Mayor for signature gathering; having the option to use electronic signatures in cases of emergency would be helpful to staff.

Agenda Item 9 (SCCCA Bylaws):

- Where is the schedule of fees due from each City?

Answer: The CASCC Board voted to keep the dues the same as in previous years. This year, the City of Los Altos paid \$8,698 in dues.

Agenda Item 11 (Electronic Voting):

- Aren't we going to install panel display for the public to view the votes?

Answer: The public will view the voting results displayed on all AV equipment within the Chambers and broadcasted by KMTV, this is a part of the original project design and was intended to be utilized since the project was initiated.

- How much will it cost for the physical panel displays and installation for public viewing going to cost?

Answer: No additional cost is associated with this. The equipment was installed and designed with the original contract for the Chamber remodel.

Agenda Item 12 (IIO Report):

- With respect to the disposition of a report, what is an “exceptional clearance?”
Answer: An exceptional clearance occurs when the initial investigation of the complaint reveals that the alleged misconduct did not occur, based on immediately available evidence such as recorded media.
- Does the IIO officer believe that the program is working as intended? Does the IIO officer have any suggestions on how to improve the IIO program?
Answer from the IIO Stephanie Atigh: I believe that the program works as intended in that it provides complainants with another venue independent of the Police Department to submit complaints.

I do not see any need for improvement other than to underscore on the website that the IIO only receives complaints relating to the conduct of Police Department personnel. Unfortunately, some citizens are reaching out to the IIO to make complaints about other issues relating to the City or their community.