
SALT LAKE CITY COUNCIL STAFF REPORT

DATE: April 15, 2004

SUBJECT: **Fee Refund Protocol Briefing**

AFFECTED COUNCIL DISTRICTS: Citywide

STAFF REPORT BY: Michael Sears, Budget & Policy Analyst

ADMINISTRATIVE DEPT. AND CONTACT PERSON: Community Development
Lee Martinez, Director

The City has received a building permit fee refund request from the Utah Food Bank, a non-profit entity. The Administration and Council have established protocols and ordinances governing the refund or waiver of fees. The applicant requests an exception to the Council's policy. The Council does not have a transmittal from Administration on this latest refund request. The Administration has treated this request for a refund in conformance with the protocol agreement and City ordinance.

This issue has been discussed in conjunction with the collection of Impact Fees and also in connection with requests made by the Utah Zoological Society and Salt Lake City Library for the refund building permit and impact fees. Council staff has included as attachments, copies of previous staff reports from 1999 and 2001 relating to similar requests and relevant City Code sections and any agreements relating to fee refunds.

A key question for the Council to consider is whether it would be appropriate given the City's ordinances and agreements to begin the practice of considering exceptions on a case-by-case basis. Case-by-case consideration of requests would necessitate a change in the City's current protocol and ordinance, as would a decision to extend the permit waiver to all non-profit organizations, rather than just to low-income housing organizations.

ORDINANCES AND AGREEMENTS:

The City has not given refunds under the existing current City Code (Section 18.20.220 (Waiver or deferral of fees)) to entities other than those that further the City's established low-income housing goals. City Code Section 18.20.220 reads as follows:

18.20.220 Waiver Or Deferral Of Fees:

Nonprofit organizations may petition the city for the waiver or deferral of any or all fees required by this title on an annual or project by project basis as provided below.

- A. *Petitions shall be filed with the housing appeals and advisory board ("HAAB").*
- B. *Waivers shall not be granted for projects that are receiving seventy five percent (75%) or more of their funding directly or indirectly from state or federal agencies, except*

for projects that upgrade or construct owner occupied housing or multiple dwelling units used for very low income housing as provided by the guidelines established by the United States department of housing and urban development.

C. Waivers under five hundred dollars (\$500.00) may be granted by the director of community development.

D. Waivers over five hundred dollars (\$500.00), and director denials of waivers under five hundred dollars (\$500.00) shall be heard informally before HAAB after notice of the hearing has been posted for seven (7) days in the office of the city recorder.

E. HAAB may recommend granting the waiver or deferral if it finds that the project or projects, and the sponsoring nonprofit organization furthers the city's established low income housing goals to provide housing for persons or families under eighty percent (80%) of the city's median income, as defined by the United States department of housing and urban development, and also meets all applicable guidelines established for any such programs by the United States department of housing and urban development. HAAB may recommend that waivers may be granted for remodeling or construction of offices for nonprofit housing corporations if it finds that such remodeling or construction will save the corporation money and that such savings will be applied to a specific housing project.

F. The HAAB recommendation will be made to the director of community development, who shall issue the decision of the department.

G. Any person or entity dissatisfied with the decision of the director may appeal such decision to the mayor or the mayor's designee, whose decision shall be final.

H. HAAB may not grant a waiver or deferral to any organization which owns, operates, manages or is related by common ownership or management to any other such organization which owns, operates or manages buildings for which existing notices of code violations have not been cured. (Ord. 6-04 § 9, 2004: Ord. 76-92 § 2, 1992)

The City's Fee Refund Protocol Agreement between the Executive and Legislative Branches was adopted on February 16, 1999. The protocol agreement reads as follows:

*FEE REFUNDS
PROTOCOL AGREEMENT*

THIS PROTOCOL AGREEMENT is entered into the day and year first written below by and between the Executive Branch (hereinafter "Mayor") and the Legislative Branch (hereinafter "Council") of the City government; and

WITNESSETH

WHEREAS, City Ordinances do not allow for any waiver of permit fees, except those specifically allowed by Ordinance; and

WHEREAS, the Mayor and City Council deem it valuable to, under certain conditions, allow the City to refund certain organizations for all or a portion of building permit fees; and

WHEREAS, each branch of City government desires to preserve and respect their separate functions, and each desires to maintain the current ordinance relating to permit fee waivers as is; and,

WHEREAS, in mutual respect for their separate but equal roles in City governance, they desire to memorialize a protocol to facilitate their orderly and meaningful interaction in this area of City business;

NOW, THEREFORE, the Mayor and City Council mutually agree to the following procedural protocol:

1. *Ordinances regarding permit fee waivers will remain unchanged.*
2. *When warranted by the criteria set forth in this protocol, the Administration will recommend refunds of building permit fees up to 100% in an advertised budget amendment for the City Council's action.*
3. *Refund Criteria:*
 1. *The organization requesting the refund is a governmental agency, or a contractual manager of a publicly owned facility.*
 2. *The project or facility being constructed provides a direct benefit to the residents of Salt Lake City.*
 3. *The refund amount will be based upon the estimated percentage of benefit to the residents of Salt Lake City.*
 4. *The property upon which the project or facility is being constructed will become a publicly owned facility inuring to the public benefit of the City.*
4. *Termination. Either party to this protocol may terminate it upon 30 days prior written notice.*

OPTIONS AND MOTIONS:

The City Council can change the fee refund protocol agreement and/or ordinance governing fee refunds to allow all non-profit entities to be eligible for a refund of their building permit fees. The City Council could also decide to make a grant to the Utah Food Bank equal to the amount of the permit fees. If the Council decided to make a grant, all requirements relating to Utah Code Section 10-8-2 must be followed. This section of Utah Code is commonly referred to as the "Doug Short" requirement.

cc: Cindy Gust-Jenson, Rocky Fluhart, Sam Guevara, Lee Martinez, David Dobbins, Steve Fawcett, Gordon Hoskins and Luann Clark

File location: Michael\Staff Reports\Code Amendments

Attachment #1

Council Staff report dated January 5, 1999

The Council requested this policy discussion in response to a request by the Administration that the Council consider approving the refund of \$20,000-\$50,000 to Salt Lake County for permit fees for the construction of the Fairmont Pool.

The City originally received a request from the County to waive the permit fees associated with the construction of the pool. City ordinances do not allow the City to waive permit fees, except for projects that provide affordable housing. In the past, on a selective basis, rather than waive the requested permit fees, the City has refunded these fees for other governmental agencies if the project has been deemed beneficial to City taxpayers. In a letter to Commissioner Brent Overson dated October 30, 1998, Roger Black indicated that the Mayor directed him to prepare a budget amendment seeking an appropriation of the estimated permit fees to Salt Lake County as a contribution to the construction of the pool.

Currently, all federal, state and school district entities are exempt from paying local permit fees. In addition, the City is authorized via City ordinance without Council approval to waive the following fees:

- building permits for low income housing (Title 18.20.220)
- fees for the use of the City and County Building for non-profit organizations (Title 15.14.020)
- fees for gatherings to express non-commercial free speech (Title 3.50.030,040)
- fees for sewer connections to low-income housing projects (Title 17.64.020)
- fees for stormwater are allowed to be reduced by fifty percent for owners of single-family residences who are qualified for the water abatement program.

The City has recently, with the consent of the Council, allowed the Property Management Division to reduce payments for encroachments on public property (i.e., planter boxes, landscaping, etc.), when such improvements are deemed beneficial to the community. Such action is referred to as a "value-for-value exchange."

ANALYSIS

The Administration prepared a policy paper two years ago which addressed, in part, the issues associated with waiving fees for projects deemed to be in the taxpayer's interest. The paper specifically recommended that the City consider adopting a fee waiver ordinance which would clarify the instances in which the City would consider waiving fees.

The Administration has not requested that the Council adopt a fee-waiver ordinance. They have expressed their desire to know whether or not the Council supports a general policy allowing the City to refund permit fees to governmental agencies then the project in question is deemed reasonable and in the best interest of the City taxpayers.

POLICY CONSIDERATIONS

The Council may wish to consider the following policy considerations when evaluating any proposed permit fee refund policy.

1. Currently, the Administration considers refunding permit fees for projects that are deemed reasonable and beneficial to the community. The current request being forwarded by the Administration is for the Fairmont Pool, a recreational facility that the Council and Administration have supported as necessary and beneficial for the community. In the past, projects such as the construction of the County Government Complex, the signage at Abravanel Hall and the butterfly building at the Hogle Zoo were considered reasonable and beneficial. It is possible that the County will request that the City consider refunding permit fees for the current Salt Palace expansion under the same justification.

The Council may wish to ask the Administration to clarify what criteria are currently used to determine a project's reasonableness and benefit. The Council may wish to establish alternative or additional criteria for use when future projects are being considered for permit fee refunds.

Furthermore, the Council may wish to ask the Administration to clarify what groups may request fee refunds from the City (i.e. governments, non-profit organizations, churches, etc.), and consider identifying which types of groups the Council would like considered for refunds under the City's policy.

Alternatively, the Council could consider requesting that permit fee refunds be considered by the Administration and Council on a case by case basis.

2. In 1995-96, instead of refunding permit fees to the County for the expansion of the Salt Palace, the City accepted land from the County in lieu of the fees. The Council may wish to ask the Administration to clarify the criteria used to determine when fees are refunded, and when "trades" or values-for value exchanges are accepted.
3. The Council may wish to consider the effect such fee refunds have on City taxpayers. Permit fees are a component in the City revenue stream, and such refunds decrease actual revenue received by the City. In addition, City taxpayers may already be contributing to projects through County-wide and Zoo, Arts and Parks (ZAP) taxes. If convention and tourism funding resources were used to fund the current expansion of the Salt Palace and the City refunded the related permit fees, City taxpayers could technically be subsidizing a project otherwise paid for by tourism dollars.

MATTERS AT ISSUE

The Council may wish to consider the following action during the discussion with the Administration on the City's policy regarding the refund of permit fees:

1. Does the Council approve of the refund of approximately \$20,000 - \$50,000 in permit fees to the County for the construction of the Fairmont Pool? The actual refund will be presented to the Council for consideration in the next budget amendment.
2. Does the Council approve of the current policy regarding the refund of permit fees in general, or would the Council prefer to consider changes to the current policy?

Attachment #2

Council Staff report dated February 15, 2001

MATTERS AT ISSUE

Salt Lake City has received two requests for fee waivers/reimbursements – one from the Utah Zoological Society (\$36,576) and one from the Salt Lake City Public Library (\$765,595). The Administration recommends denying the request by the Utah Zoological Society, and recommends waiving the Library's impact fees and reimbursing 50% of the Library's building permit fees.

If the Council approves all requested waivers/reimbursements (i.e., the Zoo's request for reimbursement of \$36,576 in building permit fees; the Library's request for reimbursement of \$617,666 in building fees; the Library's request for waiver of \$147,929 in impact fees¹), the impact would be \$802,171. If the Council approves the Administration's recommendations, the impact would be \$456,762 – the Library's impact fees of \$147,929 and \$308,833 from the 50% reduction in the Library's building permit fees.

The Administration has stated that the City is \$45,000 ahead of its projections for building permit revenue in the first six months of fiscal 2000-01 and expects this trend to continue. The Administration further states that it will identify source of funds to the Council in a budget amendment if this waiver is approved.

ANALYSIS AND POLICY CONSIDERATIONS:

Salt Lake City ordinances generally do not allow waivers of permit fees, but some exceptions exist as noted in Salt Lake City Code 14.32.420, Permit Fee Waivers. This section of the Code states that the City Engineer may waive all or a portion of permit fees if it is determined that the fee "pertains to construction of rehabilitation of housing for persons whose income is below the median income level for the City," or "pertains to an encroachment on the public way involving a beautification project which furthers specific goals and objectives set forth in the City's strategic plan, master plans, or other official documents, including decorative street lighting, building façade lighting, flower and planter boxes, and landscaping."

On February 16, 1999, the Mayor and City Council entered into a Fee Refunds Protocol Agreement relating to the reimbursement of building permit fees. In part, the agreement states that "the Administration will recommend refunds of building permit fees up to 100% in an advertised budget amendment for the City Council's action." The recommendation is warranted if a project meets the following criteria:

1. The organization requesting the refund is a governmental agency, or a contractual manager of a publicly owned facility.
2. The project or facility being constructed provides a direct benefit to the residents of Salt Lake City.

¹ Impact Fees are deposited in the Capital Improvement Program Fund. If any fees are waived, the waived amount is taken from the General Fund and placed in the CIP Fund.

3. The refund amount will be based upon the estimated percentage of benefit to the residents of Salt Lake City.
4. The property upon which the project or facility is being constructed will become a publicly owned facility inuring to the public benefit of the City.

The protocol does not specify whether all criteria must be met.

The Utah Zoological Society sent a letter to the City on December 14, 2000 requesting a reimbursement of \$36,576.03 in building permit fees for the Hogle Zoo's New Entry Plaza project, a \$5.5 million project scheduled for completion in May 2001. According to the Zoological Society, the one-acre plaza will contain ticketing areas, restrooms, a gift shop, visitor/member services, food areas, train ride and an event pavilion. The Administration is recommending denial of the reimbursement request due to a December 11, 2000 resolution by the zoo's Board of Trustees stating that "it would be best to build a new Zoo in another location." Since the resolution was drafted, a potential new location has been identified as Wheeler Farm in Salt Lake County.

The Salt Lake City Public Library is requesting reimbursement of building fees for the new Main Library and corresponding aspects of the project, as well as a waiver of related impact fees. Building permit fees are \$617,666 and impact fees are \$147,929. In compliance with ordinance provisions, the Administration proposes waiving 100% of the impact fees because it has determined that the Library was vested prior to June 1, 2000 – the date the impact fees ordinance became effective. This determination is due to the Library's bond being passed in November 1999; its initial design being presented in October 1999; and presentation of the final design being presented via a series of public open house meetings in April 2000. If it is ultimately determined that the project was vested prior to the deadline, it would not be necessary for the General Fund to reimburse the CIP Fund for the impact fees.

The Administration further recommends reimbursing 50%, or \$308,833, of the Library's building permit fees. A full reimbursement is not recommended due to the impact it would have on General Fund revenues. The Administration states the reimbursement is consistent with fee reimbursements the City has granted for other public projects. Stated reasons for approving a 50% waiver for the Library include: the Library is a governmental entity; City residents will benefit from the new library; non-profit groups will benefit from the existing building's new use; and the additional public parking and public plaza will be an amenity for City residents. In addition, the Administration cites the willingness of the Library to use bond proceeds to: add parking for City employees; provide preliminary design for the open space on the east side of the block; fund demolition of existing structures on the block; and construct a civic plaza between the two buildings. The Administration notes this will help reduce the City's expenses as it continues to build out the block.

CHRONOLOGY:

- February 16, 1999: Fee Refund Protocol Agreement signed by Mayor and Council.
- December 16, 1999: Council adopts Impact Fees ordinance.

Item A-7

- May 2, 2000: Council amends Impact Fees ordinance relating to the sharing of costs for growth and development in the City.
- June 1, 2000: Effective date of Impact Fees ordinance.
- December 4, 2000: City Library requests waiver of building and impact fees.
- December 14, 2000: Utah's Hogle Zoo requests reimbursement of building permit fees.