

RESOLUTION NO. 259-2018

A RESOLUTION MODIFYING THE POLICY FOR ASSESSING THE MANAGEMENT AND ADMINISTRATIVE COSTS INCURRED BY THE CITY IN PROCESSING DEVELOPMENT AND TREE REMOVAL PERMITS

WHEREAS, City of Rivergrove exercises land use planning and permitting authority pursuant to the Statewide Planning Goals, ORS Chapters 197 and 227 and the City's acknowledged Comprehensive Land Use Plan and adopted land use regulations;

WHEREAS, Rivergrove Municipal Code section 9.030 authorizes the City to adopt by resolution, and revise from time to time, a schedule of fees for applications and appeals;

WHEREAS, ORS 227.175 authorizes the City to set fees for processing land use applications and limited land use applications based on the actual or average cost of providing those services;

WHEREAS, staff will apply consultant costs, salaries of staff personnel including all fringe benefits and administrative overhead, and record the time needed to review and process applications to determine the actual cost to review the requested application as set forth in the City's Exhibit "1" attached hereto;

WHEREAS, the City will require applicants who seek land use approvals to enter into an Agreement to Meet Costs of Development, attached as Exhibit "2" hereto, before undertaking review of any land use approval;

WHEREAS, the City will require appellants who seek to appeal land use decisions made without a hearing to pay a fee based on the fee schedule in Exhibit "1", before undertaking review of any land use appeal;

WHEREAS, the City will require appellants who seek to appeal land use decisions made with a hearing to enter into an Agreement to Meet Costs of Appeal, attached as Exhibit "3" hereto, before undertaking review of any land use appeal;

WHEREAS, staff relies on revenue from these fees to fund review and administration of applications and appeals; and

WHEREAS, the City Council concludes that the City should recover, to the extent practicable, the actual cost of reviewing the applications and appeals.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Rivergrove:

Section 1: The City hereby amends the Planning Fee Schedule adopted in Resolution 259-2018 as set forth in Exhibit "1", to become effective January 1, 2019, as the Planning and Development Services Fee Schedule.

Section 2: All applicants for land use or tree removal approvals shall enter into an Agreement to Meet Costs of Development Review and submit a deposit of up to \$5,000.00 based upon the fee schedule in the Exhibit 1 before the City will undertake review of any land use application. Where the City's actual cost of review of the land use application does not amount to the total deposit, a refund to the applicant of any remaining balance of the deposit shall be issued within sixty (60) days of the issuance of the land use decision. Where the City's actual cost of review exceed the deposit, no permit shall issue until the applicant has paid all outstanding application fees.

Section 3: All appellants appealing a Type I Planning Commission decision shall pay a \$250 fee before the City will consider the appeal.

Section 4: All appellants appealing a Type II, II, or IV Planning Commission decision shall enter into an Agreement to Meet Costs of Appeal and submit a deposit of \$250 based upon the fee schedule in Exhibit 1 before the City will consider the appeal. Where the City's actual cost of review of the appeal does not amount to the total deposit, a refund to the appellant of any remaining balance of the deposit shall be issued within sixty (60) days of the issuance of the appeal decision. Appellant will nonetheless be required to pay the full cost of the City's processing of the appeal.

Section 5: Resolution 256-2018 dated June 11, 2018 is hereby superseded.

Approved and adopted at a regular meeting of the City Council held on the 10th day of December, 2018.


HEATHER KIBBEY, Mayor

Attested on this 10th day of December 2018:

Approved as to legal sufficiency:


Leanne Moll, City Manager/ City Recorder



City Attorney

Exhibit 1

FEE SCHEDULE

BUILDING PERMIT (CITY FEE)	\$25.00* ¹
VARIANCE/HARDSHIP RELIEF	Actual Costs
TYPE I REVIEW	Actual Costs
TYPE II REVIEW	Actual Costs
TYPE III REVIEW	Actual Costs
TYPE IV REVIEW	Actual Costs
TREE CUTTING PERMIT OUTSIDE OF WQRA	\$20 per tree + Actual Costs
TREE CUTTING PERMIT WITHIN WQRA	\$30 per tree + Actual Costs
TREE CUTTING PERMIT DEAD, DYING, DANGEROUS	\$20 per tree + Actual Costs
TREE CUTTING PERMIT EMERGENCY REMOVAL	No Fee
AREA ACCESSORY DEVELOPMENT PERMIT	\$65.00
SYSTEM DEVELOPMENT CHARGE	\$500.00 per residential unit for parks under Ordinance 82-2011
APPEAL OF TYPE I DECISION (FEE TO BE PAID UPON FILING APPEAL)	\$250.00
APPEAL OF TYPE II, III, and IV DECISIONS (DEPOST TO BE PAID UPON FILING APPEAL)	Actual Costs ²

¹ Basic building permit, plus the actual cost of hearings officer, notification and specialized services the city may require. Other building permits, like subdivision building permits may be more expensive based on actual costs.

² Based on ORS 227.175 (10) (iii)(b)

The actual costs are those costs incurred by the City in reviewing the aforesaid application for compliance with the applicable approval criteria, development and design standards. Such costs shall include the actual costs of City's land use planners, engineers and attorneys incurred in reviewing that application, including any appeal to any City authority, whether filed by applicant or others.

In addition, the City requires a deposit before it will process a land use application:

Deposit Amounts:

Type III Review for dock - \$300

Type I Review - \$400

Type II Review - \$500

Type III Review - \$1,000

Partition - \$2,000

Subdivision - \$5,000

Appeal - \$250

Where the applicant seeks a variance or hardship relief the applicant shall submit a \$500 deposit in addition to the amount of deposit for the relevant review described above.

Where the City's actual cost of review of the land use application does not amount to the total deposit, a refund to the applicant of any remaining balance of the deposit shall be issued within sixty (60) days of issuance of the land use decision.

Exhibit 2

CITY OF RIVERGROVE

AGREEMENT TO MEET COSTS OF DEVELOPMENT REVIEW

This Agreement to Meet Costs of Development Review (“Agreement”) is entered into on the last signed date indicated below by and between the City of Rivergrove, Oregon (hereinafter the “City”) and _____ (hereinafter “Applicant”) in connection with Applicant’s land use application for approval of _____ as part of Rivergrove Planning File No. _____ (hereinafter “Application”).

RECITALS

WHEREAS, Applicant has submitted to City a Development Application pursuant to the Rivergrove Code; and

WHEREAS, City is obligated by state law and City Code to review this Application, and determine whether it complies with the approval criteria and standards of state law and City’s ordinances and development standards; and

WHEREAS, the parties are uncertain about the total costs of land use planners, engineers or attorneys necessary to review and process the Applicant’s Application;

WHEREAS, ORS 227.175 authorizes City to charge Applicant for the actual cost of processing Applicant’s Application and the City has elected to do so under Ordinance #54-89 Section 9.030 (the City’s right to charge for fees incurred by the City for legal services, engineering services, planning services, etc), Resolution 200-2005 (a fee schedule), and Resolution 256- 2018 (amending the fee schedule); and

WHEREAS, if actual costs are less than the deposit, a refund will be given, if actual costs exceed the deposit, Applicant is responsible for paying the actual costs.

NOW THEREFORE, the premises being generally stated in the foregoing Recitals, the parties agree as follows:

1. Applicant agrees to be responsible for paying the actual costs incurred by City in reviewing the aforesaid Application for compliance with the applicable approval criteria, development and design standards.
 - a. Such costs shall include the actual costs of City’s land use planners, engineers and attorneys incurred in reviewing that Application including an appeal to the City authority filed by Applicant..

b. Prior to the City undertaking review of any land use application, the Applicant shall submit a deposit as required by Resolution 256- 2018 in the following amounts:

Deposit Amounts:

Type III Review for dock - \$300
Type I Review - \$400
Type II Review - \$500
Type III Review - \$1,000
Partition - \$2,000
Subdivision - \$5,000
Appeal - \$250

Where the applicant seeks a variance or hardship relief the applicant shall submit a \$500 deposit in addition to the amount of deposit for the relevant review described above.

2. Applicant agrees to be responsible for paying the actual costs incurred by City in inspecting and verifying Applicant's compliance with any representations made in its Development Applications and with any requirements of City's development and design standards.
3. If the amount of the deposit exceeds the costs incurred by the City in processing the Application, the City shall refund the remaining balance to the Applicant within 30 days of the issuance of the Permit. If the costs incurred by the City in processing the Application exceed the amount of the deposit, Applicant agrees that it will pay the overage prior to the issuance of the final permit and that no development will be allowed under the permit until the amount is paid in full.
3. Applicant agrees that the City will issue monthly invoices for costs incurred and Applicant is required to remit payment within thirty (30) days of the City-issued invoice date. The City Manager shall be authorized to deem the application void if the monthly invoice is not paid in full within sixty (60) days of the invoice date. Overdue balances remain overdue until paid in full (including all late payment fees and interest charges.) All overdue accounts will be charged a late payment fee of \$50 or 3% of the overdue balance, whichever is greater, each billing cycle. Interest at the rate of 9% on the unpaid balance, calculated daily and compounded monthly, will also be charged to all overdue accounts from the date of the original billing, each billing cycle. Accounts paid in a timely manner will not be charged any accrued interest.
4. Applicant shall raise any dispute about an entry on an invoice in writing within fifteen (15) days of the invoice date. City shall have thirty (30) days to provide a written response to such disputed entry. Applicant shall submit full payment for the invoice with the disputed entry by the agreed upon timeline in section (3) above and City shall credit a subsequent invoice if it determines that the disputed charge should be credited to Applicant. If applicant continues to dispute an entry, it shall request arbitration under section (5) below within fifteen (15) days of transmittal of the City's written response.
5. Dispute Resolution. Applicant or City may at any time request final and binding arbitration of any dispute relating to invoices, costs, or payments due, but in no event does this Agreement extend the statute of limitations under Oregon law. Any party who fails to submit to binding arbitration following a

lawful demand by the other party shall bear all costs and expenses, including reasonable attorney fees (including those incurred in any trial, bankruptcy proceeding, appeal or review) incurred by the other party who must seek court assistance to enforce these arbitration provisions. A party may request arbitration by giving written notice to that effect to the other party, specifying in the notice the nature of the dispute. The dispute shall be heard and determined in the City of Rivergrove, Oregon, by a single arbitrator agreed upon by the parties. If an agreement cannot be reached, then the arbitrator shall be appointed in accordance with the rules then pertaining to the Clackamas County Circuit Court Arbitration Program, except to the extent provided otherwise under Oregon laws on arbitration and as otherwise provided herein. If such program is terminated, then the rules of the Arbitration Services of Portland, Inc. shall be used.

a. The prevailing party shall recover fees and expenses of any arbitration under section (5), including all of its attorneys and experts fees.

b. The arbitrator shall resolve all disputes in accordance with the substantive law of the State of Oregon. The arbitrator shall have no authority or jurisdiction to award any damages or any other remedies beyond those that could have been awarded in a court of law had the parties litigated the claims in court instead of arbitrating them. The parties shall not assert any claim for punitive damages except to the extent such awards are specifically authorized by statute.

c. The parties shall use their best efforts to complete any arbitration within sixty (60) days of the filing of the dispute. The arbitrator shall be empowered to impose sanctions for any party's failure to do so. These arbitration provisions shall survive any termination, amendment, or expiration of the Agreement unless the parties otherwise expressly agree in writing. Each party agrees to keep all disputes and arbitration proceedings strictly confidential, except for the disclosure of information required in the ordinary course of business of the parties or as required by applicable law or regulation. Any time limitation (such as the statute of limitations or laches) that would bar litigation of a claim shall also bar arbitration of the claim. If any provision of this arbitration program is declared invalid by any court, the remaining provisions shall not be affected thereby and shall remain fully enforceable. The parties understand that they have decided that on demand of either of them, their disputes as described herein will be resolved by final and binding arbitration rather than in a court.

6. Should the arbitrator find in favor of the City, the City shall have the right to enforce that right through entry of judgment and seek a lien against any property owned by applicant and applicant waives all objections against the entry of judgment or lien.

IT IS SO AGREED BETWEEN THE CITY OF RIVERGROVE AND:

Applicant:

By: _____
Title:

Date: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on this _____ day of _____, 20____ by _____, the _____ of _____, a _____, for and on behalf thereof.

Notary Public for Oregon
My commission expires: _____

Exhibit 3

CITY OF RIVERGROVE

AGREEMENT TO MEET COSTS OF APPEAL

This Agreement to Meet Costs of Appeal (“Agreement”) is entered into on the last signed date indicated below by and between the City of Rivergrove, Oregon (hereinafter the “City”) and _____ (hereinafter “Appellant”) in connection with Appellant’s letter of Appeal regarding _____ as part of Rivergrove Planning File No. _____ (hereinafter “Appeal”).

RECITALS

WHEREAS, Appellant has submitted to City an Appeal pursuant to the Rivergrove Code; and

WHEREAS, City is obligated by state law and City Code to review this Appeal, and determine whether it complies with the approval criteria and standards of state law and City’s ordinances and development standards; and

WHEREAS, the parties are uncertain about the total costs of land use planners, engineers or attorneys necessary to review and process the Appeal;

WHEREAS, ORS 227.175 authorizes City to charge Appellants for the actual cost of processing Appeals and the City has elected to do so under Ordinance #54-89 Section 9.030 (the City’s right to charge for fees incurred by the City for legal services, engineering services, planning services, etc), Resolution 200-2005 (a fee schedule), and Resolution 256- 2018 (amending the fee schedule); and

WHEREAS, if actual costs are less than the deposit, a refund will be given.

NOW THEREFORE, the premises being generally stated in the foregoing Recitals, the parties agree as follows:

1. Appellant agrees to be responsible for paying the actual costs incurred by City in reviewing the aforesaid Appeal for compliance with the applicable approval criteria, development and design standards.
 - a. Such costs shall include the actual costs of City’s land use planners, engineers and attorneys incurred in reviewing that Appeal.
 - b. Prior to the City undertaking review of any Appeal of a land use application, the Appellant shall submit a deposit of \$250.

Where the City's actual cost of review of the Appeal does not amount to the total deposit, a refund to the Appellant of any remaining balance of the deposit shall be issued within sixty (60) days of issuance of the land use decision.

2. Appellant agrees to be responsible for paying the actual costs incurred by City in inspecting and verifying Appellant's Appeal with any representations made in its letter of Appeal and with any requirements of City's development and design standards.
3. Appellant agrees that the City will issue monthly invoices for costs incurred and Appellant is required to remit payment within thirty (30) days of the City-issued invoice date. Overdue balances remain overdue until paid in full (including all late payment fees and interest charges.) All overdue accounts will be charged a late payment fee of \$50 or 3% of the overdue balance, whichever is greater, each billing cycle. Interest at the rate of 9% on the unpaid balance, calculated daily and compounded monthly, will also be charged to all overdue accounts from the date of the original billing, each billing cycle. Accounts paid in a timely manner will not be charged any accrued interest.
4. Appellant shall raise any dispute about an entry on an invoice in writing within fifteen (15) days of the invoice date. City shall have thirty (30) days to provide a written response to such disputed entry. Appellant shall submit full payment for the invoice with the disputed entry by the agreed upon timeline in section (3) above and City shall credit a subsequent invoice if it determines that the disputed charge should be credited to Appellant. If Appellant continues to dispute an entry, it shall request arbitration under section (5) below within fifteen (15) days of transmittal of the City's written response.
5. **Dispute Resolution.** Appellant or City may at any time request final and binding arbitration of any dispute relating to invoices, costs, or payments due, but in no event does this Agreement extend the statute of limitations under Oregon law. Any party who fails to submit to binding arbitration following a lawful demand by the other party shall bear all costs and expenses, including reasonable attorney fees (including those incurred in any trial, bankruptcy proceeding, appeal or review) incurred by the other party who must seek court assistance to enforce these arbitration provisions. A party may request arbitration by giving written notice to that effect to the other party, specifying in the notice the nature of the dispute. The dispute shall be heard and determined in the City of Rivergrove, Oregon, by a single arbitrator agreed upon by the parties. If an agreement cannot be reached, then the arbitrator shall be appointed in accordance with the rules then pertaining to the Clackamas County Circuit Court Arbitration Program, except to the extent provided otherwise under Oregon laws on arbitration and as otherwise provided herein. If such program is terminated, then the rules of the Arbitration Services of Portland, Inc. shall be used.
 - a. The prevailing party shall recover fees and expenses of any arbitration under section (5), including all of its attorneys and experts fees.
 - b. The arbitrator shall resolve all disputes in accordance with the substantive law of the State of Oregon. The arbitrator shall have no authority or jurisdiction to award any damages or any other remedies beyond those that could have been awarded in a court of law had the parties litigated the claims in court instead of arbitrating them. The parties shall not assert any claim for punitive damages except to the extent such awards are specifically authorized by statute.

c. The parties shall use their best efforts to complete any arbitration within sixty (60) days of the filing of the dispute. The arbitrator shall be empowered to impose sanctions for any party's failure to do so. These arbitration provisions shall survive any termination, amendment, or expiration of the Agreement unless the parties otherwise expressly agree in writing. Each party agrees to keep all disputes and arbitration proceedings strictly confidential, except for the disclosure of information required in the ordinary course of business of the parties or as required by applicable law or regulation. Any time limitation (such as the statute of limitations or laches) that would bar litigation of a claim shall also bar arbitration of the claim. If any provision of this arbitration program is declared invalid by any court, the remaining provisions shall not be affected thereby and shall remain fully enforceable. The parties understand that they have decided that on demand of either of them, their disputes as described herein will be resolved by final and binding arbitration rather than in a court.

6. Should the arbitrator find in favor of the City, the City shall have the right to enforce that right through entry of judgment and seek a lien against any property owned by appellant and appellant waives all objections against the entry of judgment or lien.

IT IS SO AGREED BETWEEN THE CITY OF RIVERGROVE AND:

Appellant:

By: _____
Title:

Date: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on this ____ day of _____, 20__ by ____
_____, the _____ of
_____, a _____, for and on behalf thereof.

Notary Public for Oregon
My commission expires: _____