

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND
BUSINESS SERVICES OF THE STATE OF OREGON**

**IN THE MATTER OF A FEE)
INCREASE BY THE CITY)
OF BEND TO INCREASE) **ORDER**
STRUCTURAL, MECHANICAL,)
ELECTRICAL, ONE- AND)
TWO-FAMILY DWELLING, AND)
MANUFACTURED HOME FEES)**

This order is issued pursuant to ORS 455.210(3), which provides individuals with an appeal process to challenge an increase in building permit fees by a local building department. Upon receipt of an appeal by any persons within 60 days of a building permit fee increase, the Director must, after notice to affected parties and a hearing, review the building department's costs of administering and enforcing the various specialty programs and approve the fee increase if it is reasonable and necessary to carry out the effective administration and enforcement of the specialty code(s) for which they were adopted.

On Wednesday, August 15, 2007, at 1:30 p.m., the Building Codes Division (Division) held a public hearing at the City Council Chambers in the City of Bend, at 710 NW Wall St., Bend, Oregon, for the purposes of receiving testimony and documents regarding the City of Bend's (City) adoption of various fee increases.

The hearing officer's report following the public hearing concluded that the City submitted sufficient evidence to support a finding that the newly adopted fees were reasonable and necessary. In the officer's report, the analysis shows that one of the primary factors creating the need for the fee increase is the City's operating deficit. The City demonstrated that the various fees were not being collected to support other City functions, but were being used exclusively to support the various specialty codes.

Although the hearing officer report indicates that the building official failed to meet his legal obligations, the Division does not believe that the procedural errors necessitate disapproval of the city's entire budget. The City has successfully demonstrated that this particular fee increase is reasonable and necessary as required by ORS 455.210. This order does not extend to future or corresponding City fees.

Dated this 11th day of October 2007.

Andrea Simmons
Manager, Policy and Technical Services
Building Codes Division

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND
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IN THE MATTER OF A FEE)	
INCREASE BY THE CITY)	
OF BEND TO INCREASE)	
STRUCTURAL, MECHANICAL,)	HEARING OFFICER
ELECTRICAL, ONE- AND)	FINDINGS AND
TWO-FAMILY DWELLING, AND)	CONCLUSIONS
MANUFACTURED HOME FEES)	

**TO: ANDREA SIMMONS, MANGER OF POLICY AND TECHNICAL SERVICES
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
BUILDING CODES DIVISION**

This report is submitted as a summary of the public hearing held on Wednesday, August 15, 2007 at 1:30 p.m., at the City Council Chambers in the City of Bend, at 710 NW Wall St., Bend, Oregon. The hearing was held to receive public testimony regarding the City of Bend’s (City) ordinance which raised structural, electrical, mechanical and plumbing permit fees. The hearing was held to examine whether the fee increase passed by the City is reasonable and necessary for the City to continue to administer and enforce the various specialty codes for which they were adopted. The City offered oral testimony and written documents for the record.

I. PROCEDURAL HISTORY

On April 25, 2007, the City distributed its budget document to the budget committee and made it available to members of the public. A series of public hearings on the budget took place before the budget committee on May 8 through May 10, 2007. During the May 8 meeting, the budget committee heard presentations on the City’s Community Development budget, which included proposed building permit fee increases. By May 24, the budget committee recommended reducing the proposed increase in building permit fees from a 50% increase to a 35% increase. The City’s Community Development Department, Building Division, notified the Department of Consumer and Business Services, Building Codes Division (“Division”) of the proposed fee increase initially via e-mail on June 15, 2007. The City approved the budget, including the proposed building fees, in a regular council session held on June 20, 2007. The Division received a revised notice on June 26, adding structural fees to the list of fees raised by the City.

On June 28, 2007, the Central Oregon Builders Association (“COBA”) notified the Division of its intent to appeal the adopted building permit fees pursuant to ORS 455.210(3)(a). As directed by OAR 918-020-0220(1)(b), the City provided the Division with supplemental materials on cost allocations, geographic comparisons, and other information required by rule. The Division notified contractors in Bend and surrounding communities – Sisters, Redmond, Sunriver, Prineville, and Powell Butte – that may be affected by the fee increase. Additionally, the Division notified interested persons that had signed up to receive notification under OAR 918-020-0220(2).

As required by ORS 455.210(3)(a), the Division held a public hearing on August 15, 2007, at 1:30 p.m. at the City Council Chambers in the City of Bend, at 710 NW Wall St., Bend, Oregon, to receive testimony and documents regarding the City's adoption of various building permit fee increases. The City was given an opportunity to make a presentation at the beginning of the hearing. The presenters for the City were Sonia Andrews, Finance Director, and Robert Mathias, Building Official. The main points of the City's opening presentation are summarized below:

- The City noted that there were no other reasonable comparisons with respect to jurisdictions in the geographic vicinity. Instead, Bend compared itself to Portland, Hillsboro and Gresham, noting that even with the fee increase, Bend's fees are still lower than comparable jurisdictions. The City indicated that Jefferson County raised fees by 30% in July 2007, illustrating that Bend was not the only jurisdiction to raise fees in the area.
- The City stated that the method of calculation they use is similar to other jurisdictions and is done by a valuation of projects. The City showed that Deschutes County has a sliding scale for residential valuation of structural permit fees— the City's structural permit fees were still lower than surrounding municipalities after an increase.
- The City demonstrated that in terms of the number of permits handled per staff, the City handled more permits per staff member than eight major jurisdictions. In terms of projected permit activity, the City estimated that for the fiscal year 2007-2008, there would be an increase in permit activity from fiscal year 2006-2007. In particular, the City noted that several unidentified projects – including a 910,000 square foot mixed-use development, a 200,000 square foot, 5-story office building, a 60,000 square foot, 5-story hotel and two new schools were developments planned for 2008 within the city.
- The City explained that inspections on more complex structures and compliance with ADA litigation were driving up costs.
- The City commented that cost increases were also due to citywide allocations of costs to all departments, including cost-of-living increases, higher healthcare costs, benefits, raises, etc. Concurrent with city growth, the City's overhead costs have also inflated – such as increases on square footage charged for city hall space as well as elevated administrative costs. The City noted that without the fee increase, the City's fund reserve for the building inspection program would drop to three months of reserve, which the City said was contrary to state policy of maintaining a reasonable reserve of six to eight months of operational expenses.

After the City made its opening presentation, eight persons offered public testimony. For purposes of this discussion, their testimony is summarized below.

- Mike Lovely, Southwest Bend Neighborhood Association: Mr. Lovely stated that a 35% fee increase was reasonable. Mr. Lovely also stated that Bend was unlike other municipalities, in terms of service level.

- David Love, Habitat for Humanity: Mr. Love expressed concern that building fees put pressure on affordable housing, and for builders that attempt to keep costs down Bend is too costly.
- Andy High, Central Oregon Builders Association: Mr. High commented that the increase in fees, combined with an increase to the state surcharge from 8% to 12%¹ for the statewide e-permitting project, would be a burden to builders. Mr. High was concerned that the computer system/software upgrade being sought by the City will cause the builders to pay twice, given that the Division is in the process of implementing a statewide e-permitting program. Mr. High stated that the City's projected numbers for construction were not realistic for the coming year. Mr. High suggested that the City engage in a third-party review of their building program fees, as had recently occurred in the City of Redmond.
- Eric Porter, Desert Sun Development: Mr. Porter stated that development in Bend was difficult due to rising costs. Mr. Porter was concerned that the increase was based on incorrect data. Mr. Porter also supported the idea of a third-party fee review.
- Deby Falconer, Stone Bridge Homes NW: Ms. Falconer stated that previous changes in calculation methods raised fees in the past, and the City did not address those changes in its presentation. Ms. Falconer expressed disagreement with the geographic comparisons between Bend and other jurisdictions in Oregon. Ms. Falconer asked why costs were increasing so significantly, and she also noted that permit turnaround time did not decrease after the fee increase.
- Darryl Cox, Carlson Sign: Mr. Cox stated that fees to install signs were two to three times more costly than comparable municipalities, and that significant cost increases have occurred over the course of two years.²
- Jim Landin, GGL Architecture: Mr. Landin discussed the cost increases on plan review, as well as additional costs that have been added to deferred submittals of construction documents for approval.
- Mike Murphy, Schumacher Construction: Mr. Murphy asked why the City was increasing building fees at this point, when Bend could have phased them in over the last few years. Mr. Murphy also stated that efficiencies should reduce costs, and fees should go toward reducing costs. Mr. Murphy also stated that he was concerned that some of the City's purchases were not going to increasing efficiencies.
- Steve Miller, Pahlisch Homes: Mr. Miller expressed his concern with market conditions and questions whether the present was the appropriate time for fee increases. Mr. Miller stated that if the City knew it needed to increase fees three years ago, it should have

¹ HB 2405 (2007) authorized an increase of the current surcharge in order to implement a statewide e-permitting system.

² The hearing officer notes that the Division does not regulate the placement of signs. Municipalities are free to adopt by ordinance Appendix 'H' of the Oregon Structural Specialty Code, which does regulate the construction of signs. A municipality may also regulate the placement of signs without adopting Appendix H.

raised the fees then. Mr. Miller also stated that he was concerned that the City did not have sufficient justifications for a fee increase. Mr. Miller also expressed support for a third-party review.

- Russ Purtzer, Adair Homes: Mr. Purtzer stated that his company builds the same house in multiple jurisdictions, and that currently permits from the City and Redmond are comparably priced to Bend. Mr. Purtzer noted that the fee increase would put the City's fees substantially over that charged by Redmond. Mr. Purtzer asked why the City needed more money to cover a smaller geographic area than Deschutes County.

Immediately after the close of public testimony, the City was given an opportunity to provide rebuttal testimony. James Forbes, an attorney with Forbes Schannauer LLP, and Sonia Andrews, Finance Director, gave rebuttal testimony on the City's behalf. The main points raised by Mr. Forbes and Ms. Andrews are paraphrased below:

- The City noted that Oregon statute required the City to fund its building inspection activities solely through building inspection fees. Without an increase in fees, existing residents would end up subsidizing future growth through property taxes, which appeared contrary to statute.
- The City noted that appellant COBA received substantial notice from the City. The City noted that appellant COBA actively participated in the public city budgeting process that led to the adoption of the increased building permit fees.
- The City also stated that the only remedy available to COBA was an extension in the time in which appellant could file an appeal with the Division. Since the Division had received an appeal from COBA and was currently in the process of reviewing the increased fees, the City stated that the Division was not prejudiced by any errors in procedure made by the City.

Andrea Simmons, Manager of Policy and Technical Services, asked several questions about the submitted documentation and testimony received at the public hearing. The Division gave the City the opportunity to respond to questions in writing. The City responded August 27, 2007. The questions raised by the Division and the responses provided by the City are paraphrased below:

- *What is the role and responsibility of the City's Building Department?*
The City noted that the Building Division performs residential and commercial building inspection and oversees enforcement of both state building code matters and local code matters, such as the Sign Code. The City stated that enforcement of the state building code is funded through building permits, and enforcement of the Sign Code is funded through the General Fund and sign permit fees.
- *How does the City account for electrical permit revenues, given that Oregon statute requires electrical revenues to be segregated from other revenue streams?*
The City stated that it separates electrical permit fees and electrical plan review fees from other revenues. These revenues are accounted for separately from other building revenues. In accompanying attachments, account numbers 130-0000-322-50-35 and 130-

0000-322-50-81 related to electrical permit and plan review revenue, accordingly. The City also stated that it employs four electrical inspectors and several staff members that dedicate a portion of their time to electrical work.

- *How are costs allocated to the Community Development Department then allocated to individual divisions within CDD?*

The City noted that costs allocated to the Community Development Department are then allocated to its various divisions, including the Building Division, based on the number of full time equivalent employees in the individual divisions.

- *Are other departments and divisions of the City treated the same under the cost allocation plan?*

The City stated that the cost allocation plan applies consistently to all departments in the City, and that overhead and indirect costs are allocated on the same basis. Costs to each department are allocated based on the number of full time equivalent employees, the square footage of the building used, the number of personal computers needing support, etc.

- *On the account list provided by the City, for what purpose are the transfers in the accounts ending with 96-XX?*

The City stated that transfers from those accounts are for specific services provided to the Building Division from other departments within the City. The City noted that these particular transfers are not part of the overhead cost allocation plan and do not recur each year. The City explained that account number 96-11 transferred funds to the Fire Department for fire inspection services, account number 96-33 transferred funds for rent at an annex building, account number 96-51 transferred funds for the purchase of the City's electronic plan review software system, and account number 96-58 transfers funds to the City's accessibility program.

At the close of the public hearing, the hearing officer held the record open for ten days to allow for further written submissions. The City reiterated its legal points and authorities, as well as answered the questions posed by the Division (see above). COBA also offered written testimony before the hearings officer closed the record. COBA's testimony raised several points for consideration, and is paraphrased below:

- COBA said that the City gave no statistical information underlying their numbers in the August 15th presentation.
- COBA stated that after review of the Building Division's accounts for the 2006-2007 fiscal year, 40% of the projected expenses exceeded actual expenses by 50% or more. COBA specifically identified account numbers 10-01, 12-01, 12-06, 21-02, 21-04, 22-01, 24-01, 24-02, 26-03, 27-16, 33-20, 34-05, 40-01, 40-20, 40-24, 40-55, and 94-60 exceeding actual expenses. COBA stated it is concerned that the City may be projecting costs well in excess of actual costs for fiscal year 2007-2008.
- COBA expressed concern that building permit fees were subsidizing the Building Division's Code Enforcement program, as well as enforcement of the City's Sign Code,

in apparent contravention to the statutory directive that building inspection fees be used for the administration and enforcement of the state building code.

II. REVIEW COSTS OF ADMINISTERING BUILDING INSPECTION PROGRAM

A. Review of Expenditures and Revenues

A review of a municipality’s fee subject to appeal under ORS 455.210(3) consists of two different inquiries. First, the Division reviews the municipality’s fee adoption process. Second, the Division reviews the costs of administering and enforcing those portions of the state building code for which the municipality has assumed responsibility. The hearing officer will address the second part of the statutory inquiry first – namely, the costs of administering and enforcing the state building code. In examining the costs of administering and enforcing the City’s building program, the hearing officer reviewed the costs of running the program against the revenues collected in support of the program.

The hearing officer notes that the expenditures for the City have increased steadily over the past four years. The City testified that several factors caused the increase, such as conducting more complex inspections, meeting increases in costs of living, health care, benefits and payroll. In its initial submission to the Division, the City noted that overhead also increased due to the City’s rising administration costs. The City further noted an accessibility settlement with the federal Department of Justice as a source of rising expenditures. The City testified that in an effort to reduce expenditures, it cut \$1.6 million, and 12 full-time equivalent employment openings from the original Community Development Department budget. The following chart illustrates the widening gap between revenues and expenditures:

Fig. 1: Total Revenues and Expenditures, 2003 – 2008					
Source: City of Bend					
	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008 (proj.)
Revenues	3,831,691	5,152,003	5,483,113	4,179,584	5,768,900
Expenditures	3,663,628	4,197,493	5,112,932	5,563,384	6,708,089

In terms of the citywide allocated costs, the hearing officer finds that the allocations are generally reasonable. The cost allocations generally distribute costs to departments logically and for purposes that can be considered part of administering and enforcing the state building code. Items such as information technology support, facility rent and other costs appear to relate to the statutory requirement that the fee is used for the administration of the state building code. There is one allocation that raises concern, however. Account number 96-58 makes a one time transfer of funds from the Building Division to the City’s accessibility program. From the information requested by the Division, the nature of the transfer is unclear, so it is difficult for the hearing officer to attribute exactly how the transfer is being used. Media reports seem to indicate that the settlement agreement with the federal Department of Justice revolves around improving public facilities. The City needs to clarify for the benefit of its citizens whether the transfer of building permit monies from the Building Division is being used to fund projects other than those related to administering the state building code.

Testimony from the public tended to indicate that the items driving the cost increases were unreasonable – in other words, the City was not focusing on improving efficiencies. Appellant

COBA raised this point on two separate instances, once during the public hearing on August 15 and then again in written testimony submitted to the Division, which indicated there was excess budgeting of cost accounts. Other members of the public also expressed concern about the City's costs of administering the program. While we acknowledge that choices a municipality makes in terms of expenditures may dramatically affect the cost of administering a program, the decision is ultimately a function of the municipality's governing body. It is the City's responsibility to give direction to its subordinate departments on realizing increased efficiencies. The Division cannot determine the reasonableness of individual expenditures by a building program.

As part of the inquiry, expenditures need to be compared to projected revenue. Revenue for the City's building inspection program is chiefly derived from building permits. The City testified during the August 15 public hearing that total numbers of building permits increased until fiscal year 2006-2007, when the City experienced a noticeable drop in building permits issued. The City projected an increase of permit activity for fiscal year 2007-2008. Figure 2 illustrates past permit activity and the projection made by the City.

Fig. 2: Total Permits Issued, 2001 – 2008							
Source: City of Bend							
Fiscal Year	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	07-08 (Proj.)
Permit level	13,725	16,358	17,878	21,641	22,488	15,874	17,970

Members of the public expressed some concern about the projected number of permits made by the City. As stated in the summary of testimony above, appellant COBA raised the point in the August 15 public hearing. Mr. Porter and Mr. Miller similarly expressed concerns about market conditions that would affect projected permit activity. Obviously, the question of market conditions figure prominently in the decision to raise building program fees. The hearing officer notes that the only quantitative data received in the course of this process originated from the City. Independent sources of economic analysis do not necessarily contradict the projections made by the City. The September 2007 Oregon Economic and Revenue Forecast noted that while central Oregon's economic growth slowed from the second quarter of 2006 to the second quarter of 2007, it remained the fastest growing region in the state. Although the Office of Economic Analysis stated that noticeable risks remained – particularly in housing construction – the analysis did not predict an overall decline in all construction permits.

In the August 15 public hearing, the City stated that the complexity of projects necessitated greater expenditures – and therefore a fee increase to keep up with these projects. Figure 3 catalogues the number of total inspections and permits issued to show an increase in the number of inspections per project.

Fig. 3: Ratio of Inspections to Permits, 2004-2008				
Source: City of Bend				
	2004-2005	2005-2006	2006-2007	2007-2008
Permits Issued	21,641	22,488	15,184	17,970
# of Inspections	72,900	85,300	65,100	86,400
Ratio of Inspections to Permits	3.37	3.79	4.29	4.81

Arguably, the data provided does not clearly depict why construction activities in the City require more inspections than in previous fiscal years. Furthermore, the data provided does not distinguish between residential and commercial construction, which require different means and methods of construction. It follows that residential construction, which is not generally as complex as commercial construction, may not require involved plan review and inspections. However, the data provided does generally show an increase in workload for City staff without contradictory evidence that the City is working through projects that likely require more inspections.

In its initial submission to the Division, the City noted that a fee increase was necessary because the City increasingly had to rely on an operating reserve fund to meet expenditures. The City stated that the Division recommended a 6 to 8 month reserve fund, and that without a fee increase the reserve fund could only cover three months of operating expenses. There is nothing inherently unreasonable in establishing and maintaining a reserve fund to provide stability in funding sources. However, the nature and amount of a reserve fund is a decision answerable by the governing body of each municipality. The Division has shared best practices in the past, but not a specific recommendation as to the form and character of a reserve fund. In September 2001, the Division sent the City a letter to the previous building official as part of a general review of the City's building program. The letter contained an attachment listing the best practices of other municipalities the City may wish to consider implementing. Part of those best practices was the establishment of a reasonable reserve account. The Division noted in this letter that the typical size of a reserve fund in other municipalities was equivalent to 6 to 8 months of operating expenses. In essence, while the Division does not consider the establishment of the City's reserve fund to be unreasonable, the reasonableness of the size of the fund is wholly a local decision.

B. Comparative Analysis

The second half of this inquiry focuses on a comparative analysis between the challenged fees and fees adopted by other municipalities. Under ORS 455.310(3)(d), there are three items to consider:

- Whether the fee is the same amount as or closely approximates the amount of the fee charged by other municipalities of a similar size and geographic location for the same level of service;
- Whether the fee is calculated with the same or a similar calculation method as the fee charged by other municipalities for the same service; and
- Whether the fee is the same type as the fee charged by other municipalities for the same level of service.

The City argues – and the hearing officer agrees – that comparing the City to immediately surrounding municipalities is impractical due to the differences in size. According to 2005 population estimates from the US Census Bureau, the City is far larger than Jefferson and Crook Counties, as well as the communities contained in those counties. The City noted in its initial submission to the Division, and subsequently in the August 15 public hearing, that in comparing

its operations to other municipalities the focus should be on the number of total permits issued per staff member. Several factors led the hearing officer to reject that approach. Most importantly, the statute only requires the Division to consider “a municipality of a similar size and geographic location” for purposes of comparing building program fees. In any event, not all staff will be involved in inspections or plan review, as some staff may only sell permits or provide other means of support. Also, not all inspectors are certified and assigned to residential inspections, which is the only comparison data provided by the City. Because not all staff are assigned to certain inspections, the number of permits per staff is an inexact measure of a municipality’s overall workload.

After consideration of what constitutes a “municipality of a similar size and geographic location,” the hearing officer concludes that in this case a comparable jurisdiction is a city – but not a county – within approximately 20,000 persons of the City’s population. Cities and counties have various factors to consider, such as the difference in costs for inspecting outlying county areas as opposed to the relative density of a city. The construction needs of a city within 20,000 persons of the City will likely be different than a smaller county population – or, for that matter, a city well above the threshold established by the hearing officer.

Previous orders issued from the Division do not address the question of what constitutes a reasonable fee vis-à-vis other municipalities’ fees. The statutory directives requiring the hearing officer to determine reasonableness through comparing the fees of similar jurisdictions has not been addressed through an agency order. For the purposes of determining reasonableness, if a City-adopted fee does not significantly differ from the list of identified cities, the fee is reasonable. Figure 4 charts the cities selected by the Division for review and comparison.

Figure 4: Division-Selected Municipalities for Comparative Analysis							
Source: Oregon Secretary of State, 2006 Local Population Data							
City	Bend	Beaverton	Corvallis	Gresham	Hillsboro	Medford	Springfield
Population	75,290	84,270	53,900	97,745	84,445	73,960	57,065

Figure 5, on the next page, charts the structural permit fees for the cities selected by the Division for the comparison. It appears that from our data that in terms of structural permits, the City’s fees closely approximates other municipalities’ structural permit fees.

Figure 5: Comparison of Structural Permit Fees							
<i>Source: Department of Consumer and Business Services, Building Codes Division</i>							
Valuation	Bend	Beaverton	Corvallis	Gresham	Hillsboro	Medford	Springfield
\$1.00 to \$500	\$13.50	\$48.00	\$20.48	\$62.00	\$17.70	\$10.00	\$50.00
\$501 to \$2,000	\$25.00+\$2.00 for each additional \$100	\$48 + \$2.15 for each additional \$100	\$20.48 + \$2.36 for each additional \$100	\$62.00+\$5.00 for each additional \$100.00	\$19.86-\$50.10	11.50 + \$1.50 for each additional \$100	\$50.00
\$2,001 to \$25,000	\$44.00+\$8.00 for each additional \$1,000	\$80.25 + \$7.30 for each additional \$1000	\$55.90 + \$9.35 for each additional \$1000	\$137+\$12 for each additional \$1000	\$58.95-\$253.65	41.58 + \$4.48 for each additional \$1000	\$50 for the first \$2,000 + \$8.58 for each additional \$1,000
\$25,001 to \$50,000	\$230+\$6 for each additional \$1,000	\$248.15 + \$6.40 for each additional \$100	\$270.96 + \$7.03 for each additional \$1000	\$413+\$10 for each additional \$1000	\$259-\$408.65	\$189.00 + \$3.36 for each additional \$1000	\$247.34 for the first \$25,000 + \$6.44 for each additional \$1,000
\$50,001 to \$100,000	\$382+\$4 for each additional \$1,000	\$408 + \$5.15 for each additional \$1000	\$446.70 + \$4.56 for each additional \$1000	\$663+\$7 for each additional \$1000	\$413.08-\$630.15	\$308.88 + \$2.24 for each additional \$1000	\$408.34 for the first \$50,000 + \$4.29 for each additional \$1,000
\$100,001 and up	\$584+3.50 for each additional \$1,000	\$665.65 + \$3.05 for each additional \$1000	\$680.11 + \$3.90 for each additional \$1000	\$1,013+\$7.00 for each additional \$1,000	\$630.15+\$3.19 for each additional \$1,000	\$470.34 + \$2.20 for each additional \$1000	\$622.84 for the first \$100,000 + \$3.58 for each additional \$1,000

Figure 6 compares the plumbing fees for residential structures with selected municipalities. The City's increased fees appear to be on the upper end of this chart. But the City's plumbing fees are not significantly different from the other municipalities selected for comparison.

Figure 6: Comparison of Plumbing Permit Fees							
<i>Source: Department of Consumer and Business Services, Building Codes Division</i>							
	Bend	Beaverton	Corvallis	Gresham	Hillsboro	Medford	Springfield
One and Two Family-1 bath	\$233	\$200	\$200	\$426	\$295	\$60	\$160
One and Two Family-2 bath	\$402	\$230	\$222	\$542	\$413	\$120	\$280
One and Two Family-3 bath	\$501	\$260	\$244	\$695	\$472	\$180	\$337
One and Two Family-4 bath	\$566	\$284	\$266	\$811	\$495	\$240	\$353

Figure 7 compares the City's mechanical fees with the jurisdictions selected for this comparison. The mechanical fees appear to be on the lower end of the spectrum. The mechanical fees, more so than the plumbing counterparts, closely approximate the fees in similar jurisdictions.

Figure 7: Comparison of Mechanical Permit Fees							
<i>Source: Department of Consumer and Business Services, Building Codes Division</i>							
	Bend	Beaverton	Corvallis	Gresham	Hillsboro	Medford	Springfield
Base Permit Fee	\$44.50	\$92.10	\$50.00	\$39.00	\$64.90	\$10.00	\$50.00
Supplemental mechanical permit	\$8.00	–	\$8.00	–	–	–	–
Installation or relocation of forced-air gravity type furnace or burner up to 100,000 BTU	\$17.00	\$44.10	\$19.00	\$17.00	\$17.70	\$18.00	\$14.00
Installation or relocation of forced-air gravity type furnace or burner over 100,000 BTU	\$20.00	\$51.80	\$24.00	–	–	\$22.50	\$17.00
Installation of floor furnace, including vent	\$12.00	–	\$19.00	\$17.00	\$17.70	\$18.00	\$14.00
Installation or relocation of suspended heater	\$12.00	\$44.10	\$19.00	\$17.00	\$17.70	\$18.00	\$14.00
Installation, relocation or replacement of appliance vent installed and not included in an appliance permit	\$7.00	\$22.00	\$9.00	\$16.00	\$11.80	\$9.00	\$7.00
Installation or relocation of boiler or compressor to and including 3 horsepower, or absorption system to and including 100,000 BTU/h	\$16.00	–	\$19.00	\$22.00	\$17.70	–	\$14.00

Figure 8 compares the most common electrical fees between the City and the municipalities selected for comparison. The City certainly appears to assess the most for electrical installations out of all the municipalities selected. In some cases, the City charges substantially more for service than a comparable jurisdiction, particularly for presumably complex electrical installations. For instance, in permits for service or feeder installations, alterations or relocations over 1000 amperes, the difference between the fees assessed by the City and the fees assessed by other municipalities range from a low of \$195 to a high of \$386. Given that the sampled jurisdictions are as similarly situated as may be possible in this kind of inquiry, the difference in fees charged for complex electrical installations is noticeable. Other electrical fees charged by the City, however, are clearly within close proximity of other municipalities. On the whole, however, the electrical fees are not significantly different from identified cities.

Figure 8: Comparison of Electrical Permit Fees							
<i>Source: Department of Consumer and Business Services, Building Codes Division</i>							
	Bend	Beaverton	Corvallis	Gresham	Hillsboro	Medford	Springfield
Residential-single or multi-family per dwelling unit with service included, 1000 sq. ft. or less.	\$212.00	\$119.20	\$110.00	\$180.00	\$151.04	\$96.00	\$117.00
Each additional 500 sq. ft. or portion thereof	\$36.50	\$21.25	\$20.00	\$37.00	\$25.96	\$17.00	\$21.00
Each manufactured home or modular dwelling service or feeder	\$98.50	\$56.15	\$50.00	\$83.00	\$70.80	\$45.00	\$55.00
Service/feeders-installation, alteration or relocation 200 amps or less	\$120.00	\$70.90	\$60.00	\$104.00	\$88.50	\$55.00	\$70.00
Service/feeders-installation, alteration or relocation 201 to 400 amps	\$146.00	\$84.40	\$75.00	\$129.00	\$106.20	\$65.00	\$83.00
Service/feeders-installation, alteration or relocation 401 to 600 amps	\$241.50	\$140.40	\$100.00	\$192.00	\$177.00	\$115.00	\$138.00
Service/feeders-installation, alteration or relocation 601 to 1000 amps	\$305.00	\$183.60	\$150.00	\$256.00	\$230.10	\$150.00	\$180.00
Service/feeders-installation, alteration or relocation over 1000 amps	\$726.00	\$422.60	\$350.00	\$509.00	\$531.00	\$340.00	\$413.00
Reconnect only	\$98.50	\$56.15	\$45.00	\$66.00	\$70.80	\$45.00	\$55.00

After a review of the City's fees as compared to similarly situated municipalities, it appears that the fees closely approximate the fees assessed by other jurisdictions. The permit fees for complex electrical installations were the only notable outliers that the hearing officer found in the process of comparing the fees to other municipalities.

III. REVIEW OF FEE ADOPTION PROCESS UTILIZED BY CITY

The general legislative policy concerning building program fees is that a municipality may “adopt by ordinance or regulation such fees as may be necessary and reasonable” in order to operate its building inspection program. ORS 455.210(3)(a). Municipalities are free to establish a set of building code fees that defray the costs of maintaining the program. However, as a condition to this general legislative policy, a municipality must also meet additional notice requirements and may be subject to state review. If a municipality adopts fees, the municipality “shall give the Director [of the Department of Consumer and Business Services] notice of the proposed adoption of a new or increased fee.” ORS 455.210(3)(a). The statute requires a municipality to give notice to the Director “at the time the municipality provides the opportunity for public comment under ORS 294.160 regarding the fee, or, if the proposed fee is contained in an estimate of municipal budget resources, at the time notice of the last budget meeting is published in a newspaper under ORS 294.401.” *Id.* ORS 294.401, in turn, requires the budget committee of a municipality to hold one or more public meetings to receive “the budget message and the budget document” as well as to provide “members of the public an opportunity to ask questions about and comment upon the budget document.”

In addition to the specific statutory criteria set out in ORS 455.210, ORS 455.148(11) also gives the Director the authority to “regulate building inspection programs,” which can include, but is not limited to, “standards for justifying increases in building inspection program fees adopted by a municipality....”. OAR 918-020-0220(1)(a) promulgated under this statute by the Director require a municipality to submit notice of fee changes to the Division within 45 days of the fee’s adoptive date. In its ordinary usage, adopt means, among other things, “to accept formally.” OAR 918-020-0220(1)(a). In other words, the adoptive date refers to the date the municipality’s governing body formally accepts the proposed fees. The City rightly points out that in the event that a municipality fails to meet any of the fee adoption standards outlined in OAR 918-020-0220, the Director may deny a fee adoption.

In the event of an appeal, ORS 455.201(3)(b) requires the Director to review both the municipality’s fee adoption process and the costs of administering and enforcing the state building code. In reviewing these items, 455.210(3)(d)(D) requires the Director to consider whether the municipality, “in adopting the fee, complied with ORS 294.160, 294.361 and 294.401 and *this section and standards adopted by the director under ORS 455.148(11).*” Thus, the Director must review the procedural history of a fee adopted by a municipality in determining the reasonableness of that fee. While it is true that potential appellants receive additional time to file an appeal – 365 days as opposed to 60 days, in the event that notice is not given to the Director – the remedy for improper notice may include the examination of the procedural steps taken by a municipality and findings based on that review.

From the record, the City failed to meet both statutory and administrative requirements for notice for the purposes of ORS 455.210 and OAR 918-020-0220s, but it does appear that the City met the requirements of ORS Chapter 294. Clearly, the proposed building fees were included as part of the overall City budget. In terms of providing notice “at the time notice of the last budget meeting is published in a newspaper under ORS 294.401,” the city did provide notice to the public in the Bend Bulletin on two occasions – April 7 and April 14, 2007. Notice provided in the Bend Bulletin informed the public that the budget committee would meet on May 8 through

May 10. However, the Division first received notice of the proposed fee increases via e-mail on June 15, 2007. Under ORS 455.210(3)(a), the building official should have provided notice to the Division on April 14, when the City published notice of the last budget committee meeting in the local newspaper. In regard to administrative standards, the Division required notice 45 days before the City Council approved the proposed building inspection fees. The City approved the proposed fees on June 20, 2007. Again, as noted above, the Division received notice of the proposed fee increase on June 15, only five days before approval. This is considerably shorter than the 45-day period required by OAR 918-020-0220(1)(a).

While it is imperative that a municipality deliver proper and timely notice to the state concerning a building program assumed from the state, we recognize that mitigating circumstances occurred in this instance, which reduce the effects of the defective notice. First, the City did not adopt these building inspection fees in a vacuum, as these fee increases were included in the City's total budget package for the biennium. Second, there is nothing in the record to suggest that the City failed to meet its general obligations under ORS chapter 294 to provide notice and documentation for its budget committee meetings. The record indicates that interested parties did have opportunity to comment on the budget document.

However, mitigating factors do not excuse the conduct of the local building official in failing to meet state statute and administrative rule relating to the City's building program. A condition of the City's certification places a duty on all building officials authorized to oversee building inspection programs to "act in the public interest in performing their duties," which includes "adhering to all applicable building code statutes and rules..." OAR 918-098-1470. Proper and timely notice is clearly part of the "applicable building code statutes" the legislature intended a municipality to enforce as part of its assumed responsibilities. Building officials charged with administering the state building code need to be mindful of their obligations to ensure all applicable laws are carried out to the best of their ability. Thus, the Division is concerned about the administration of the laws, particularly over the condition of the notice provided to it, in this instance.

IV. CONCLUSIONS

The City provided sufficient evidence to demonstrate the various causes of rising costs, notwithstanding concerns that the increases could be caused, at least in part, by a lack of efficiency within the Building Division. However, those types of budget decisions are left to the municipality's governing body.

The City demonstrated that the fee increase is both reasonable and necessary for administering and enforcing the various specialty programs for which they were adopted. The City submitted sufficient evidence in this regard, illustrating the need for funds based on the widening gap between revenues and expenditures. Comparisons to other jurisdictions, both in terms of evidence supplied by the City and evidence gathered independently by the hearing officer, the City showed that its fees were comparable to selected jurisdictions for similar levels of service. Figures 4 through 8 summarize these findings.

There is a concern that the City failed to meet the Building Codes Division administrative requirements for notice. The City did not provide the Division notice 45 days prior to the

adoptive date, and failed to provide notice at the time of the last budget committee meeting. However, there is no evidence to suggest that the City failed to meet its obligations under ORS 294.401. This failure by the building official should not result in denial of the City's \$480 million biennial budget. Action outside the scope of this review process may be appropriate.

After a thorough review of the evidence on record, the hearing officer recommends the Division adopt the findings contained in the report. The City has demonstrated that the fee increases are reasonable and necessary in accordance with ORS 455.210.

Respectfully submitted, this 11th day of October 2007.

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