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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division Staff

DATE: February 8, 2024

RE: **RESOLUTION TO ADJUST THE FEE SCHEDULE FOR THE BOARD OF
ZONING APPEALS**

Council Member Latisha Johnson requested that the Legislative Policy Division (LPD) provide a resolution to adjust the fee schedule for the Board of Zoning Appeals (BZA). This resolution is accompanied by a Memorandum from BZA Director James Ribbron regarding the justification for the fees and a draft of the updated fee schedule.

Please contact our office if we can be of any further assistance.

BY COUNCIL MEMBER LATISHA JOHNSON:

RESOLUTION TO ADJUST THE FEE SCHEDULE FOR THE BOARD OF ZONING APPEALS

WHEREAS, Section 9-507 of the 2012 Detroit City Charter permits the Director of the Board of Zoning Appeals to institute a Fee Schedule subject to the approval of City Council; and

WHEREAS, the Board of Zoning Appeals has seen an increase in appeals due to a change in the standing requirements for filing an appeal by the Michigan Supreme Court; and

WHEREAS, the Director of the Board of Zoning Appeals has developed a Fee Schedule to account for the cost of administrating the increase in appeals; and

WHEREAS, there is no retroactive adjustment(s) for fees charged prior to the effective date of the new Fee Schedule; and

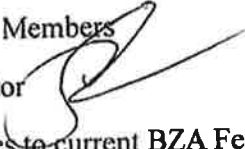
WHEREAS, the proposed fee schedule from the Board of Zoning Appeals is attached and incorporated into this resolution; and

WHEREAS, the City Council has reviewed the proposed Fee Schedule for the attached items; **NOW, THEREFORE BE IT**

RESOLVED that the Detroit City Council approves the Fee Schedule proposed by the Director of the Board of Zoning Appeals for the attached items and it shall become effective 60 days from the date of adoption.



MEMO

DATE: Tuesday, February 6, 2024
TO: Honorable City Council Members
FROM: James W. Ribron, Director 
RE: Rationale for adding Fees to current BZA Fee Schedule

The current BZA Fee Schedule is missing two Case Categories being charged a Fee: Hardships and Community Appeals. I request action to add the two Case Categories to the current fee schedule. The current schedule is attached for your review. I have also attached a “draft” Fee Schedule with the requested changes.

The fee for a Hardship should be listed at \$1500; that is same as a BZA Denial which is listed on the schedule at \$1500. Hardships are allowed by the City Code Chapter 50: DIVISION 7. - HARDSHIP RELIEF PETITIONS.

The fee for Community Appeals should be listed at \$500. The Zoning Ordinance; Section 50-4-102. APPEALS: Appeals to the Board of Zoning Appeals may be taken by any person, firm, partnership or corporation, or by any City department, commission, board or other City agency which is aggrieved: (1) By a decision of an enforcing officer; or (2) By any decision made by the Buildings, Safety Engineering, and Environmental Department involving conditional uses, regulated uses, or controlled uses; or (3) By any denial of a site plan by the Planning and Development Department.

Under Michigan statutory law (MCL 125.3604), a person “aggrieved” by a local government zoning or land use decision possesses standing to file an appeal with the person’s local zoning board of appeals. Michigan case law on this “aggrieved person standard” has evolved over time. For years, standing was only granted to persons who suffered “special damages”—specific, unusual, and substantial interference related to the beneficial use and enjoyment of his/her/its own property not otherwise common to other property owners similarly situated.

However, on July 23, 2022, the Michigan Supreme Court revised that standard. Prior to July 23, 2023 the Board of Zoning did not Assess a Fee for Community Appeals. Additionally, we had fewer than 2 or 3 Community Appeals cases a year.

Since July 23, 2022 we have 8 Community Appeals case, with two pending in 2024. The staff time, mailing, posting in the Legal News and BZA Hearing is the same thing we do for all BZA cases. The \$500 fee will cover the cost of mailing and posting in the Legal News.

Fees, as opposed to taxes, are not subject to the Headlee Amendment to the Michigan Constitution requiring voter approval for the levying of a new tax, where the fee is exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit.¹

When determining whether a charge imposed by a local ordinance is a user fee or a tax generally, a user fee is exchanged for a service rendered or a benefit conferred whereas a tax is designed to raise revenue.² In addition, the user fee must also:

- (1) serve a regulatory purpose rather than a revenue-raising purpose;
- (2) be proportionate to the necessary costs of the service; and
- (3) be for a service voluntarily undertaken by the consumer.³

Therefore, when a municipality imposes a fee for providing a service to members of the public, it must calculate the actual cost of providing that service. The fee imposed should then be reasonably proportional to the cost of the service, otherwise a court may determine that the fee is actually a tax that is subject to electorate approval under the Michigan Constitution. Accordingly, the table below includes a calculation justifying the proposed changes to the BZA fee schedule by demonstrating that the fees are proportionate to the cost of providing the service.

¹ Mich. Const. art. 9, § 25. *Kochis v. City of Westland*, 409 F. Supp. 3d 598 (E.D. Mich. 2019).

² *Bolt v. City of Lansing*, 459 Mich. 152, 587 N.W.2d 264 (1998).

³ *Id.*

BZA Fee Analysis

Application	Director Hourly Rate 59.1389	Executive Administrative Assistant 37.7871	Zoning Inspector 37.9495	Board of Zoning 83.333
In Take Process/Schedule	1.0			
Prepare Worksheet	1.0			
Update Smartsheet & Database	1.0			
Create Notice			1.0	
Type Docket			1.0	
Petitioner Notice			1.0	
Publication/Notice		1.0		
Update Website		1.0		
Send out Dockets		1.0		
Labels				
Mailing Postage			2.5	
Staff Report	.5		2.0	
Inspector Site Visit			1.0	
Contact Petitioner	1.0			
Send Files to Board Members	1.0			
BZA Check-In w/City Staff	1.0			
BZA Hearing	1.5	1.5	1.5	1.5
Decision & Order	.5			
Minutes	.5			
Printing	.75	.75		
Miscellaneous Petitioner Discussions	1.0			
Totals	620.95845	236.169375	521.805625	124.9995
				1503.93258