

# MEMORANDUM

File 130.52

**POLICY COMMITTEE MEETING:** September 12, 2018  
**AGENDA ITEM NO.:** 10.C.  
**FROM:** Alan Hofmann, General Manager-Secretary  
**SUBJECT:** **Recommendation from the Policy Committee:  
Adoption of Policy Regarding Recovery of  
Costs for Processing Conditional License  
Agreements, Encroachments and Easement  
Abandonment**

## Summary

The District is often approached by private contractors and constituents who desire to use District property or request changes to District legal documents for development, personal or business needs. These issues take staff time to attend to matters from individuals or contractors that are not pertinent to the mission of the District.

In order to insure compliance with District policy, the District requires that a contractor, or others, enter into a Conditional License Agreement prior to entering District property to access adjacent parcels, construct or repair District or other public facilities, take soil samples to determine fill quality, or discharge non-stormwater into our storm drainage system (consistent with State and Federal regulations). Such agreements require the contractor, or others, to carry specified levels of insurance and define the time and task parameters under which access is granted. Staff must prepare the License Agreement document and perform inspection of the activity.

The District, from time to time, is also asked to address encroachments into storm drain easements or abandon existing easements. All of this effort consumes staff time to review and process documents. These requests are not associated with the development process and are the result of individual needs or desires.

The review of Conditional License Agreement requests, by District management and staff, requires consideration of the specific work involved, possible impacts to District property, and coordination between the contractor and basin or pipeline operations. License Agreements make use of a contract form that requires review and signature by the District's General Manager. Encroachments or abandonments also take time to review the specifics of the requests and prepare documents or prepare memorandums for Board approval.

Staff performed an internal study of the Conditional License Agreement process to determine which staff are involved and the value of time spent to process the typical agreement. It was

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found that, regardless of the nature of the license request, it requires approximately fifty-four dollars (\$54) worth of staff time to review a request, check contractor insurance, draft a Conditional License Agreement and present it to the General Manager for consideration. Encroachments and abandonments are more site specific and may consume more staff time.

The proposed policy, related to the cost to review and process a Conditional License Agreement and encroachments and abandonments, would require a processing fee for service, whereby a service charge of fifty dollars (\$50.00) would be assessed for the Agreement preparation and a deposit would be secured to recover costs associated with the work (time and materials) to process an encroachment or abandonment.

The proposed policy was introduced to the Policy Committee on August 16, 2018. At that meeting, the attached proposed Policy was reviewed and subsequently approved for submittal to the full Board with the recommendation below. Should the Board adopt the Policy, staff will schedule and notice a public hearing before the Board, to consider amendment of the Master Schedule of Service Charges (District Ordinance 2016-2) to implement the cost recovery provisions of the Policy.

Recommendation

It is the recommendation of the Policy Committee that the Board of Directors adopt the attached Cost Recovery; Conditional License Agreements, Encroachments, and Easement Abandonment Policy.

Discussion

The District is processing many applications requested by private contractors and constituents who need to use District property or request changes to District land documents for development, personal or business needs. The processing of these requests consumes staff time to attend to matters from individuals or contractors, and it is appropriate that the District recover the cost for such activities.

**Conditional License Agreements**

The District has processed over 130 Conditional License Agreements (CLAs) since the beginning of 2016. These include authorizations for a wide variety of activities, including entry into basins to sample soils to determine suitability for engineered fill, the discharge of accumulated rainwater from active construction sites into our system, repair of underground irrigation pipe, and access to adjacent parcels to maintain signs, build pools or trim trees overhanging District property. The process begins with a request from a private party or public agency. District Operations staff reviews the request, consults with the applicant on the time and space required for the activity and confirms that the applicant is carrying the necessary insurance. If both the requested activity and insurance are acceptable, an agreement is drafted based on a standardized template, then sent to the applicant for their signature. Upon return of the signed agreement it is presented to the District General Manager for review and approval.

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Staff has done an internal review of the CLA process, what staff is involved, and how much time is expended on the typical CLA. The normal process requires 40 minutes of effort by two or three staff persons before the agreement is ready for consideration by the General Manager. The value of staff time invested is calculated to be about \$54 per agreement. In some cases additional costs are incurred in the course of monitoring the activities covered by the CLA, to ensure District property has not been harmed and the Licensee's work is consistent with the agreement. Typically, Operations field staff are assigned to facilitate site access and check to make sure the time and space "footprint" of CLA activities conform to the agreement. It may be desirable, in the case of CLAs that have a greater potential for undesirable impacts or are longer term, that the applicant be required to provide a deposit and be subject to a time and materials charge related to staff assistance and monitoring.

**Encroachments and Easement Abandonment**

The District, from time to time, is asked to address encroachments into storm drain easements or to abandon existing easements. This effort consumes staff time to review the specifics of the requests and prepare documents or memoranda for Board approval. Unlike CLAs, which follow a relatively simple, standard form and process, encroachments and abandonments are more specific and may consume considerable staff time. To recover staff costs from such efforts, it is recommended that the requesting party be required to place a deposit with the District, against which are billed the time and materials needed to fulfill the request.

**Adoption of Policy**

The Policy Committee reviewed and approved for consideration by the full Board a policy that addresses the cost for staff to administer Conditional License Agreements. The policy would include a service charge of fifty dollars (\$50.00) for the review of a request for a Conditional License Agreement. The fee would be processed for an amendment to the Master Schedule of Service Charges. The policy also includes a requirement for a deposit and time and materials billing to address encroachments into storm drain easements, to abandon existing easements, or in anticipation that a Conditional License Agreement has the potential to consume a substantial amount of field monitoring.

Attached for the Board's review is the proposed policy.

Respectfully submitted by:

*Alan Hofmann, General Manager-Secretary*

Attachments

1. Policy Proposal - Cost Recovery; Conditional License Agreements, Encroachments, and Easement Abandonment