

**ORDINANCE NO. 2011-9**

**AN ORDINANCE AMENDING AND ADDING TO THE CITY OF BASTROP CODE OF ORDINANCES CHAPTER 1, ARTICLE 1.01 ET SEQ., PROVIDING FOR THE REIMBURSEMENT OF PROFESSIONAL AND CONSULTING FEES INCURRED BY THE CITY IN THE REVIEW OF APPLICATIONS AND SUBMISSIONS TO THE CITY INCLUDING ENGINEERING, PLANNING, LEGAL, TECHNICAL, OR ENVIRONMENTAL CONSULTANTS OR PROFESSIONAL(S); ESTABLISHING ENFORCEMENT AUTHORITY, REPEALING ANY INCONSISTENT PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

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**WHEREAS**, under certain circumstances it is necessary for the City of Bastrop to hire independent consultants, including engineering, planning, legal, technical, or environmental professionals ("Consultant(s)") in connection with planning, development and other applications and submissions to the City in order to assess and make recommendations on the application or submission; and

**WHEREAS**, the City has a right to be reimbursed for the actual cost of such services, in order to ensure that those whose activities generate the costs are responsible for payment of same, and further to ensure that such costs do not unduly burden the Citizens of the Community, at large, so long as the City maintains a separate escrow account for these funds; and

**WHEREAS**, the fees charged to applicants for Consultants in the review of submissions and applications shall be assessed in addition to any and all other fees required by any other law, rule or regulation of the City Code.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AS FOLLOWS:**

**Section 1. Charges for Consulting Services Established.**

- A. The City Manager, or his designee, in the review of any planning, development or other application or submission to the City may seek and retain professional assistance regarding the application and/or submission from an engineering, planning, legal, technical, or environmental consultant selected by and/or employed by the City ["Consultant(s)"], as is deemed necessary, to facilitate the review of the application or submission.

- B. Professional fees and related charges incurred by the City for the services of the Consultant(s) shall be in accord with the charges customarily made for such services in Bastrop County, and shall be provided pursuant to an agreement to retain such Consultant(s) by and between the City and such Consultant(s).
- C. The individual or entity that provides an application or submission to the City that necessitates review by Consultant(s) shall reimburse the City for all reasonable costs incurred in the use of the Consultant(s) within thirty (30) days of being provided a copy of a professional fee invoice, or as otherwise agreed by the City Manager. The professional Consultant(s)'s fees are assessed in addition to any and all other fees required by other law, rule, or regulation of the City Code.
- D. An application or submission to the City may be deemed incomplete, and review by the City terminated or suspended, if any professional fees and costs related to the Consultant(s)'s work remain outstanding and owed to the City.

Section 2. Escrow Accounts.

- A. At the City's discretion, at the time of tender of any submission or application for review by the City, the City may create an escrow account with funds provided by applicants from which withdrawals will be made to reimburse the City for the cost of professional services by Consultant(s). The applicant will initially provide funds to the City for deposit into the escrow account in an amount to be determined by the City Manager based on his evaluation of the nature and complexity of the application or submission.
- B. The applicant will be provided with copies of City fee invoices for the services of Consultant(s) as they are submitted to the City, which amounts will be withdrawn by the City from the escrow account, for payment of same, within thirty (30) days. When the balance in the escrow account is reduced by one-third (1/3) of its initial amount, the applicant shall deposit additional funds into the account to bring its balance up to the amount of the required initial deposit. If the account is not replenished within thirty (30) days after the applicant is notified, in writing, of the requirement for such additional deposit, the City may suspend its review of the application or submission, until such time as the funds are remitted to the City. If the funds are not provided to the City within 15 days, the City shall reject the application and/or submission and the applicant shall be required to initiate the process again, in order to continue the project and to pay all fees related to same.

- C. Once all Consultant's fees and costs related to a particular submission or project have been paid by the applicant, either directly or through the escrow account, the City shall refund to the applicant any funds remaining on deposit.

Section 3. Alternative Periodic Payments

As an alternative to the creation of an escrow account, the City Manager may, at his/her sole discretion, authorize an applicant to pay the costs, fees, and expenses incurred by the City for professionals and Consultant(s) upon the submission of periodic statements to the applicant, payable within thirty (30) days after receipt thereof. In determining whether periodic payments will be permitted the City Manager may consider such factors as: 1) the applicant's ability to pay; 2) former dealings with the City; 3) the cost of the project; and/or 4) any other factor deemed relevant by the City Manager.

Section 4. Collection of Fees.

- A. All fees required pursuant to this chapter shall be collected by the City Manager, or his designee.
- B. No final action by the City, including but not limited to presentation to the City Council of all or part of a project, shall occur until all fees billed by the City for the cost of professionals and Consultants are paid in full, either directly or through the escrow account.

Section 5. Repealer.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 6. Severability.

If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

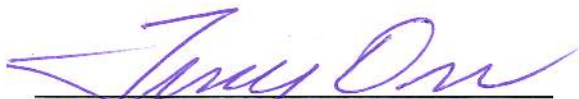
Section 7. Effective Date.

This Ordinance shall be come effective ten days after adoption on second reading.

READ AND ACKNOWLEDGED on first reading the 8<sup>th</sup> day of March 2011.

PASSED AND ADOPTED on second reading this 22<sup>nd</sup> day of March  
2011.

APPROVED:

  
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Terry Orr, Mayor

ATTEST:

  
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Teresa Valdez, City Secretary

APPROVED:

Jo-Christy T. Brown, City Attorney