

Listing of Attachments and Submissions for City Council Consideration of Administrative Appeal of Fire Inspection Fees Invoiced to Peter Nelson

- A. Questions to Be Answered by the City Council Form
- B. Rules for City Council Consideration of an Appeal of City Fees
- C. Written Submissions of Party Positions and Supporting Documentation (Submission of the City of Milpitas was previously provided in a separate binder. Mr. Nelson's Submission was previously provided in a separate document box.)
- D. City Objections to Mr. Nelson's Written Submission
- E. Record of Procedural History Index and Documents
- F. Proof of Service
- G. Mr. Nelson Objections to the City's Written Submission

NOTE: All documents are also available at the City Clerk's Office.

QUESTIONS TO BE ANSWERED BY THE CITY COUNCIL

Under Milpitas Municipal Code Section IV-3-7.00 (Appeal to City Council), the decision of the City Council is framed by answering the following questions:

1. As to Mr. Nelson’s fire inspection fees for years 2004, 2005, and 2006, was the fee or charge improperly calculated or did the costs allocated to the fire inspection services exceed the actual cost of providing the service?

___ YES ___NO

If the City Council answers “NO,” there are no further issues for City Council consideration.

2. If the City Council answers “YES,” then what should be the reduced fee amounts for years 2004, 2005 and 2006 for Mr. Nelson?

_____ Amount of 2004 Fee for Mr. Nelson

_____ Amount of 2005 Fee for Mr. Nelson

_____ Amount of 2006 Fee for Mr. Nelson

[Note: The actual amount already collected for 2004 was \$624.00. No fees were collected for years 2005 and 2006.]

RULES FOR CITY COUNCIL CONSIDERATION OF ADMINISTRATIVE APPEALS OF CITY MANAGER DECISIONS ON CITY FEES

1. The appellant Peter Nelson has already submitted an appeal letter to the City Clerk, dated February 17, 2006. City staff may submit a written response to that letter.
2. In addition to that appeal letter and any City staff response, both parties may submit a written submission to the City Clerk outlining arguments in support of their position.
3. **All written submissions must be delivered to the City Clerk at least seven (7) calendar days prior to the City Council meeting in which the appeal will be considered.**
4. Both sides shall be limited to a maximum of four (4) pages of substantive argument for each submission. However, both sides may attach additional documents, reports, or other evidence as exhibits to their four-page argument section as they deem appropriate.
5. The Mayor may refuse to allow the presentation of written arguments, documents, reports, exhibits or other materials that are not submitted on time or do not follow these rules.
6. Any party submitting materials to the City Clerk for the administrative appeal shall simultaneously provide a copy of said materials to the opposing party.
7. Under Milpitas Municipal Code Section IV-3-7.00, the City Council shall decide whether or not a hearing on an administrative appeal on city fees or charges is necessary. If the City Council decides to hold a hearing, such hearing shall be open and public and subject to the following procedural rules:
 - a. The City Council shall act as the hearing body, with the Mayor acting as the chief hearing officer. The Mayor shall ensure compliance with these hearing rules and the maintenance of decorum with the assistance of the City Attorney and City staff.
 - b. The City Council shall have the authority to answer all questions raised on appeal and to make new findings of fact and determinations of law.
 - c. At the hearing, each side shall be given a total of ten (10) minutes to present their oral arguments. During that allotted time, a party may present witnesses or documentary or photographic evidence, provided that the party has met the seven (7) day submission and notice rules. No cross-examination of the witnesses by the parties shall be allowed.

- d. The Mayor may extend the time allotments herein set forth in equal measures to both sides as he or she deems appropriate for purposes of fairness or to answer questions from Council members.
 - e. The parties shall not be bound by any of the technical rules of evidence or admissibility used in courtroom proceedings. The Mayor may conduct the hearing in the manner most conducive to determinations of the truth and shall use his or her own discretion and common sense in the determination of the admissibility of evidence. Upon request, the Assistant City Attorney shall provide advice and counsel on such matters.
 - f. The names of any witnesses that may testify at a hearing must be submitted to the City Clerk and the opposing party at least seven (7) calendar days prior to the City Council meeting in which the appeal will be considered. The Mayor may refuse to allow the presentation of witnesses that were not timely identified and announced.
8. As finders of fact, the City Council shall be the judge of the relevancy and materiality of any evidence and testimony offered. Such judgments shall be guided by common sense. Conformity with the legal rules of evidence shall not be required.
9. The burden of proof is on the appellant.
10. All decisions of the City Council are final and shall be made in writing to the appellant.

1 MICHAEL J. OGAZ, City Attorney (SBN:109371)
2 BRONWEN E. LACEY, Deputy City Attorney (SBN: 226751)
3 OFFICE OF THE CITY ATTORNEY
4 CITY OF MILPITAS
5 455 East Calaveras Boulevard
6 Milpitas, CA 95035

7 Telephone: (408) 586-3040
8 Facsimile: (408) 586-3056

9 Attorneys for
10 CITY OF MILPITAS

11 BEFORE THE CITY COUNCIL
12 OF THE CITY OF MILPITAS, CALIFORNIA

13 IN RE:
14 PETER NELSON ADMINISTRATIVE
15 APPEAL HEARING

**CITY'S OBJECTIONS TO PETER
NELSON'S EXHIBITS**

Council Meeting Date: October 20, 2009

16 THE CITY HEREBY makes the following objections to documents submitted by
17 Appellant Peter Nelson for the record only:

- 18 1. The City objects to Exhibit A on the grounds that the information is not relevant
19 since the inspections were conducted in 2004, after the 2003 fee increase and were
20 not part of the information that could have been reasonably relied on by the City in
21 adjusting the fire inspection fee.
- 22 2. The City objects to Exhibit B on the grounds that the information is not relevant
23 since the inspections were conducted in 2005, after the 2003 fee increase and were
24 not part of the information that could have been reasonably relied on by the City in
25 adjusting the fire inspection fee.
- 26 3. The City objects to Exhibit C on the grounds that the information is not relevant
27 since the inspections were conducted in 1993, before the enactment of the 1995 fee
28 which was the fee increased in 2003 fee and were not part of the information that
was reasonably relied on by the City in adjusting the fire inspection fee.

- 1 4. The City objects to Exhibit D on the grounds that the information is not relevant to
2 the extent that Appellant's expert witness only conducted part of the City's
3 inspection process. To extent that the deposition testimony does not relate to the
4 time that an inspector makes a site inspection, the City objects to the relevance of
5 the deposition testimony.
- 6 5. The City objects to Exhibit E on the grounds that the information is not relevant
7 since the inspections were conducted in 2005, after the 2003 fee increase and were
8 not part of the information that could have been reasonably relied on by the City in
9 adjusting the fire inspection fee.
- 10 6. The City objects to Exhibit F on the grounds that the information is not relevant
11 since this declaration of Patricia Joki was drafted and signed in 2007, after the 2003
12 fee increase and were not part of the information that could have been reasonably
13 relied on by the City in adjusting the fire inspection fee.
- 14 7. The City objects to Exhibit G on the grounds that the information is not relevant to
15 the extent that the video only include part of the City's inspection process.
- 16 8. The City objects to Exhibit H on the grounds that the information is not relevant to
17 the extent that the documents include information before 1995, since it was not part
18 of the information that was reasonably relied on by the City in adjusting the fire
19 inspection fee, and after 2003 were not part of the information that could have been
20 reasonably relied on by the City in adjusting the fire inspection fee.
- 21 9. The City objects to Exhibit L on the grounds that the information is not relevant to
22 extent that the questions seek information after the 2003 fee increase and were not
23 part of the information that could have been reasonably relied on by the City in
24 adjusting the fire inspection fee. The City further objects to Exhibit L on the
25 grounds that the information is not relevant to extent that the questions seek
26 information unrelated to the small apartment building inspection and fee increase.
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1 10. The City objects to any evidence or consideration of issues outside the boundaries
2 of Mr. Nelson's appeal as stated in the original appeal to the City Manager dated
3 January 13, 2006.

4 11. The City objects to any remedies raised outside the boundaries of Mr. Nelson's
5 appeal as stated in the original appeal to the City Manager dated January 13, 2006
6 and/or outside the jurisdiction of the appeal conferred under Milpitas Municipal
7 Code IV-3-7.00.

8
9 OFFICE OF THE CITY ATTORNEY
10 CITY OF MILPITAS

11 Dated: October 6, 2009

12 By: 
13 BRONWEN E. LACEY
14 Deputy City Attorney for the City of
15 Milpitas
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CITY OF MILPITAS RECORD OF PROCEDURAL HISTORY

IN RE: PETER NELSON FIRE INSPECTION FEES APPEAL

City Council Meeting of October 20, 2009

RECORD NUMBER	RECORD DATE	RECORD DESCRIPTION
1	10/21/03	City Council Agenda Summary, Minutes
2	11/4/03	Resolution No. 7352 (Fee Resolution), Minutes
3	12/1/03	Finance Invoice No. I00013513 to Peter Nelson for 2004 calendar year in the amount of \$312.00
4	5/10/04	Finance Final Notification to P. Nelson for 12/2/03 Invoice for \$312 plus \$312 late fees
5	11/29/04	Patricia Joki letter to P. Nelson re: must pay 2004 fees by 12/17/04 or City will pursue small claims action, certified mail receipt, envelope confirming attempts to deliver
6	12/1/04	Finance Invoice No. I0000016942 to P. Nelson for calendar year 2005 in the amount of \$312.00
7	4/15/05	Finance Final Notification to P. Nelson for 12/1/04 Invoice for \$312 plus \$312 late fees, envelope confirming refusal of acceptance
8	5/4/05	Plaintiff's Claim and Order to Go to Small Claims Court, filed by P. Joki for \$832, setting trial date for 7/11/05
9	7/11/05	Small Claims Court Notice of Continuance of Trial to 8/29/05
10	8/29/05	Small Claims Court Notice of Entry of Judgment against P. Nelson and in favor of Fire Department in the amount of \$832 plus \$22 costs
11	9/6/05	P. Joki letter to P. Nelson re: must pay 2005 fees by 9/20/05 or City will pursue small claims action, certified mail receipt confirming delivery
12	9/22/05	Superior Court Notice of Appeal filed by P. Nelson
13	9/30/05	Superior Court Notice of Small Claims Appeal Trial (ultimately continued to 4/28/06)
14	12/1/05	Finance Invoice No. I000020392 to P. Nelson for calendar year 2006 in the amount of \$312.00
15	1/13/06	P. Nelson appeal letter by Attorney Jeffrey Widman to City Manager requesting investigation and hearing
16	2/10/06	Letter from City Manager Lawson to Widman rejecting P. Nelson's appeal, declining to reduce fees or hold hearing
17	2/17/06	Letter from J. Widman to City Council appealing City Manager's decision of 2/10/06
18	4/28/06	Judgment After Trial De Novo in favor of City in the amount of \$624
19	5/1/06	Two (2) City Receipts for \$312.00 each for total payment of \$624 by P. Nelson in satisfaction of Judgment

20	5/3/06	Amended Judgment After Trial De Novo
21	6/23/06	Tolling Agreement
22	12/15/06- 6/19/09	First through Tenth Amendments to Tolling Agreement
23	8/27/09- 8/28/09	Emails between P. Nelson and M. Ogaz re: 1)Appeal of Fire Inspection Fees Before City Council, and 2) Request for Continuance
24	8/31/09	Eleventh Amendment to Tolling Agreement
25	8/31/09	M. Ogaz email to P. Nelson re: 11 th Tolling Agreement
26	undated	Twelfth Amendment to Tolling Agreement
27	10/7/09	Email from Bryan Otake to P. Nelson re: Memorialization of Conversation of 10-07-09 Between Bryan Otake, Assistant City Attorney, and Peter Nelson, Appellant

1 MICHAEL J. OGAZ, City Attorney (SBN:109371)
2 BRONWEN E. LACEY, Deputy City Attorney (SBN: 226751)
3 OFFICE OF THE CITY ATTORNEY
4 CITY OF MILPITAS
5 455 East Calaveras Boulevard
6 Milpitas, CA 95035

7 Telephone: (408) 586-3040
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11 BEFORE THE CITY COUNCIL
12 OF THE CITY OF MILPITAS, CALIFORNIA

13 IN RE:

14 PETER NELSON ADMINISTRATIVE
15 APPEAL HEARING

16 **PROOF OF SERVICE**

17 Council Meeting Date: October 20, 2009

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1 **PROOF OF SERVICE**

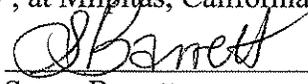
2 In Re: Peter Nelson Administrative Appeal of Fire Department Inspection Fees
3 Before the City Council of the City of Milpitas

4 I, the undersigned, declare: I am now, and at all times herein mentioned have been, a
5 citizen of the United States and a resident of the County of Santa Clara; I am over the age of
6 eighteen years and not a party to the within matter; my business address is 455 E. Calaveras
7 Blvd., Milpitas, California 95035-5411. On October 8, 2009, I served on the parties below a
8 copy of each of the following documents:

- 9
 - 10 ▪ **Questions to be Answered by the City Council;**
 - 11 ▪ **City's Objections to Peter Nelson Exhibits;**
 - 12 ▪ **City of Milpitas Record of Procedural History (updated for October 20,**
 - 13 **2009 City Council Meeting); and**
 - 14 ▪ **Proof of Service**

12	By United States Mail. I enclosed the documents in a sealed envelope or package addressed to the person(s) at the address(es) indicated below and (<i>specify one</i>):
13	
14	___ deposited the sealed envelope with the United States Postal Service with postage fully prepaid.
15	
16	___ placed said copy in a sealed envelope addressed as shown below, with postage fully prepaid thereon, which was then placed for collection and mailing at my place of business following ordinary business practices for collecting and processing mailings.
17	
18	By personal service. I delivered the documents by hand and left a true copy with the person(s) and at the address(es) shown below.
19	
20	By facsimile transmission. I caused a true facsimile thereof to be electronically transmitted to the parties by using their facsimile number indicated below.
21	
22	<input checked="" type="checkbox"/> By overnight delivery. I consigned a true copy of the documents in a sealed envelope to an overnight courier for next business day delivery to the person(s) and address(es) shown below.
23	
24	By messenger service. I provided the documents to messenger service for delivery to the person(s) at the address(es) listed below.

25 I declare under penalty of perjury that the foregoing is true and correct and that this
26 Declaration was executed on October 8, 2009, at Milpitas, California.

27 
28 Susan Barrett

(service list continued on next page)

1 **PARTY(S) SERVED:**

2 Peter Nelson
3 108 Rankin Street
4 Santa Cruz, CA 95060

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Dear Mayor and City Council members, 10/13/2009

I object to the x 145 pages of documents which the attorneys for the City of Milpitas are now submitting for the appeal of the Fire Inspection fees. According to a September 4th, 2009 letter from Bryan Wake, "the deadline to submit any written materials, evidence, and names of witnesses is Tuesday, September 29, 2009, no later than 5:00 p.m."

If this written material is allowed to be submitted 14 days after the deadline, then to ensure procedural fairness to both parties it should be given time to submit additional material.

Thank you.

Pete Kils

City Clerk's Office

OCT 13 2009

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