DURHAM
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CITY OF MEDICINE

CITY OF DURHAM | NORTH CAROLINA

Date: January 27, 2016

To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From Marvin G. Williams, Director of Public Works
Subject: Revision to City Code Section 70-17 - Payment of Frontage Charges

Executive Summary
Section 70-17(b) of the City of Durham's Code of Ordinances states that as a condition precedent to connecting a property to a water or sewer main, a "frontage charge shall apply to all frontage of the property on abutting streets which has not been previously assessed or paid for by the property owner regardless of whether or not such water main or sewer main, or both, have yet been installed abutting all frontage of the property." The code allows for exemptions when certain criteria are met, but based on various objections voiced over the years and the identification of potential inequities by staff, the City Manager's Office has directed the Public Works Department to bring this issue before City Council for consideration of a code revision. The proposed code revisions will be presented in two phases. The first phase consists of several technical changes to the verbiage of the code and the simplest changes to implement. The second phase, to be presented at a later date, will address more substantial changes, such as monetary charges including minimum and maximum fees, as well as how and when reimbursements are made to developers for certain infrastructure.

Recommendation
The Public Works Department recommends that City Council adopt an ordinance amending certain parts of Section 70-17(b) of the Durham City Code as noted in the attached code revision.

Background
Pursuant to City Code Section 70-17, as a prerequisite to connecting to City water and sewer mains, each property must pay a frontage fee for all of its frontage along existing rights-of-way (unless the frontage has been previously paid for), regardless of whether or not the water or sewer mains have been installed in the rights-of-way. While this has proven to be a generally sound policy since its adoption in 1987, there are certain instances where an exception to the policy could be warranted. One such exception was put into place when Council adopted Ordinance 14195 on November 7, 2011, that authorized the City Manager to waive any charges for frontage in excess of 200 feet along any street where the utility would never be built. Further code revisions are being recommended to allow for additional exemptions to the policy of collecting fees for all unpaid frontage as a prerequisite to connection with water and sewer mains.) The specifics are outlined in the Issues and Analysis section of this memo.

Issues and Analysis
Revisions to Section 70-17 of the City code are recommended in order to address various objections that have been voiced by property owners over the years and to alleviate potential inequities identified by staff related to the collection of frontage fees,. The following amendments to the ordinance have been selected for Phase 1, as these changes in practice are the easiest to make and implement.

1) The ordinance change, which gave the City Manager the authority to waive any charges for frontage fees in excess of the 200 feet along any street where the utility would never be built, has been a good step forward in addressing inequities for certain properties. As dictated by the ordinance, those requests have been referred to the City Manager's Office for consideration. It has been determined that in most cases this decision could be made at staff level and that when disputes arise those items should be referred to the City Manager for resolution. Therefore, it is recommended that the Code be revised to allow the City Manager or his designee to determine that a water or sewer main will not be installed in a section of street and to waive frontage fees for that section per the Code. It is further recommended that all frontage fees be waived for street sections where a water or sewer main will not be built, thereby eliminating the practice of collecting a minimum of 200 feet of frontage.

2) One of the most difficult areas to determine the need for future utility extensions is along unopened rights-of-way. This is also one of the most objected to frontage fees. Therefore, it is recommended that no frontage fees be charged along unopened rights-of-way.

3) There are cases where the City has a utility extension agreement with a developer that requires the City to collect frontage fees for any property that connects to the utilities installed by the developer that was not a part of their original project and reimburse those fees to the developer to help offset the cost of extending the utility. In most instances, the agreement specifies a timeframe (usually ten to fifteen years) that the City will makes refunds to the developer. The practice has been at the expiration of the reimbursement period for the City to continue to collect frontage fees, even though they are not reimbursable to anyone. It is recommended that frontage fees no longer be collected for new connections to mains for which the reimbursement period has expired.

4) A final issue involves the practice of charging sewer frontage fees along rights-of-way even though an outfall line has been built to serve the property. In essence a developer could be paying twice for the same service. The developer would be absorbing the cost of constructing the outfall line, as well as paying road frontage fees along rights-of-way where the main may be built to serve other properties. A more equitable solution would be to reduce the property's sewer frontage fees by an amount equal to all non-reimbursed costs incurred by the owner or developer for the construction of the outfall, with said reduction not to exceed the sewer frontage fee. The developer would be required to provide certified as-built drawings and cost figures prior to receiving the frontage fee reduction (or refund, if the frontage fee had already been paid).

Alternatives
The alternative would be to leave the ordinance as is and continue to collect frontage fees for all property frontage with no relief, except for what is already outlined in the Code of Ordinances, or to adopt select portions of the recommended code revisions.

Financial Impacts
The financial impacts of this Code revision would be the loss of future frontage revenues that would normally be realized under the current practice for collecting those water and sewer frontage fees.

SDBE Summary
N/A