

**FINAL REPORT
CASE #1804 CITY OF STOCKTON
COMMUNITY DEVELOPMENT DEPARTMENT
PERMIT AND PLAN CHECK FEES**

REASON FOR INVESTIGATION:

The 2004-2005 Grand Jury heard from several witnesses testifying in another case. In their testimony, the witnesses alleged that the City of Stockton raised building permit and plan check fees without required council approval and without completing a survey to properly estimate the fee adjustment. The witnesses all further alleged that the city is aware of this over-charging, and continues to do so illegally. These allegations prompted our investigation.

This report focuses on the combination permit and plan check fees for new single-family structures because it generates nearly all revenue for the Building Division.

BACKGROUND:

The Building Division is part of the Community Development Department and calculates fees for building permits and plan checking. The most common type of permit is the combination permit. The fees charged for combination permits provide financial support for the Building Division's expenditures to inspect each trade during the construction process. City ordinance Section 13-304 requires a combination permit to be issued if at least two of the following trades are used:

- Building
- Electrical
- Mechanical
- Plumbing

This requires a combination permit to be issued to construct all new single-family structure.

All references to "revenue" in this report are generated exclusively from combination permits and the accompanying plan check fees. The plan check fees pay for the Building Division's service costs to check building plans for required property clearances, structural calculations, and electrical requirements.

Combination permits are calculated by multiplying the square footage of the living space by the listed valuation, a variable used to estimate the cost to build a house (see example A). This system is used to approximate the cost of inspecting each phase of construction. Plan check fees are calculated as an additional 72% of the combination permit price (see example A).

The Building Division included the plan check fee as part of the combination permit fee prior

to a fee change in 2001. The document describing the calculation for the combination permit and plan check fees did not specifically state that the plan check fee was part of the basic combination permit fee of \$36.00 (see the Community Development – Building Schedule of Fees Table). In 2001, a misinterpretation of this document led to the addition of a second plan check fee of 72% of the combination permit fee added on top of the existing fee of \$36.00. Approximately six months later, the Building Division conducted an investigation because it realized that it may be over-charging. The investigation revealed the misinterpretation, but the fee increase was not reversed.

Example A

Calculating the building permit and plan check fee for a 2,000 sq. ft. house

Step 1, Determine permit valuation	
2000 sq. ft. house	
X \$87.00 valuation (for fiscal year 2003-2004)	
<u>\$174,000 permit valuation</u>	
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Step 2, Calculate the building permit fee	
\$174,000	
- \$100,000 (first \$100K of valuation)	← the first \$100,000 of valuation costs \$1656.90
<u>\$74,000 (remaining valuation)</u>	← the remaining \$74,000 of valuation costs \$9.10 for each \$1,000
74	
X \$9.10	
<u>\$673.40</u>	
\$673.40 + \$1656.90 = \$2330.30	
The building permit fee for a 2,000 sq. ft. house will cost \$2330.30	
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Step 3, Calculate the plan check fee	
\$2330.30	
X 72%	
<u>\$1677.82</u>	
The plan check fee for a 2,000 sq. ft. house will cost \$1677.82	
The fees for the combination permit and plan check fees for a 2,000 sq. ft. house totals \$4008.12	

Typically the developer or the company that builds the home pays the permit and plan check fees. The developers and builders do not challenge the rise in fees because they can pass the charges on to the home owner. The plan check fee for sub-divisions is lowered if the same plan is used for a number of houses and this plan has been approved previously. In this case, the Building Division only needs to check for property clearances and the plan check fees are reduced to 42% of the building permit fee from the normal 72%.

All permit and plan check fee changes must be approved by city council and a study must show the need for the fee increase. This fee increase was proposed to the city council in 2001 with the perception that the department was not charging for plan checking. City Council approved the fee increase in resolution 01-0279.

The Community Development Director can adjust the valuation without council approval. The valuation factor is normally consistent with tables listed by international building councils.

The Grand Jury's investigation revealed that charging more than the cost to provide service may violate of Health and Safety Code §17951 and Government Code §66014 .

Health and Safety Code §17951 states that fees “...shall not exceed the amount reasonably required to administer or process these permits, certificates, or other forms or documents, or to defray the costs of enforcement required by this part to be carried out by local enforcement agencies, and shall not be levied for general revenue purposes. The fees shall be imposed pursuant to Section 66016 of the Government Code.”

Government Code §66014 states “...those fees may not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of the fee charged in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.”

The Community Development Director has stated that these codes do not specify a time in which an agency may recover fees to provide services. The director has also stated that the current fees are not excessive because the Community Development Department, as a whole, has suffered an accumulated ten year deficit of \$40,000,000 and that the department is liable to pay back this deficit even though the city’s General Fund has already covered the expenses. The director has further stated that any reserve generated may be put into the city’s General Fund to help alleviate any future deficit of the department. The director has admitted that the Building Division currently needs additional employees, training, technology, and building space but that the excess revenue from the past five fiscal years has not been used to support these needs. The director has further explained that, though the fees have increased, the City of Stockton currently charges less than most other cities in California.

The City Manager has also stated that he holds the same position, claiming that the current fee schedule is legitimate because the codes do not specify a time limit to recoup deficits or to build up a reserve. The City Manager asked for and received a “legal analysis” from then Interim City Attorney Jayne Williams to justify the fee increase when the mistake in calculation was identified. An audit conducted by the City Auditor was in accordance with the “legal analysis” stating that the fee schedule was fitting.

The number of permits issued annually is shown in the following chart. The size of single-family homes has increased along with the valuation variable. This accounts for a portion of the fee increases.

Combination permits issued for new, single-family structures

Fiscal Year	1994-1995	1995-1996	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004
Permits Issued	1038	1139	823	991	1234	2628	1912	1605	2984	2926

METHOD OF INVESTIGATION:

The Grand Jury heard testimony from several witnesses who were testifying in another case.

The Grand Jury also interviewed:

- Jim Glaser, Community Development Director for the City of Stockton
- Mark Lewis, City Manager for the City of Stockton
- Dwane Milnes, former City Manager for the City of Stockton
- The Building Division Manager
- The former Community Development Director for the City of Stockton, John Carlson
- Former plan check personnel

The Grand Jury also reviewed the following information from the Community Development Department's Building Division:

- Building permit fee structure and formulas for the past ten years
- Plan check fee formulas for the past ten years
- 10 receipts of permits issued for new single-family structures, one from each of the past ten years with similar sized houses
- The Building Division's budget from the past ten fiscal years
- The Building Division's revenue from the past ten fiscal years

The Grand Jury reviewed the following documents:

- 1997 Uniform Building Codes specific to building permit and plan check fees, a description of allowable fees, and the process to appeal fees
- California voter approved Proposition 218, a proposed law requiring voter approval for local government taxes, fees, charges, and assessments which is under litigation
- California Health and Safety Code §17951, Code Enforcement Fees
- California Government Code §66014, Fees for Specific Purposes

FINDINGS:

The Grand Jury finds the following . . .

1. Builders today may be paying excessive fees for combination permits and plan checking because of a misinterpretation made in 2001. This misinterpretation has generated more than \$40,000,000 during the past five fiscal years.
2. The \$40,000,000 surplus that has been transferred to the General Fund and has not been reinvested in the Community Development Department or the Building Division to support its needs.
3. Stockton City Council did approve the permit fee increase in 2001 (resolution 01-0279). The Grand Jury finds that the fee increase was owed to a misinterpretation of the fee schedule document. This misinterpretation was used as the study (analysis) required for the city council to approve the fee increase.

4. The City of Stockton, with justification from the former Interim City Attorney and the City Auditor, may be charging more than the cost to provide service for combination and plan checking fees. This has allowed the City of Stockton to use the Building Division as a source of revenue and may violate California Health and Safety Code §17951 and California Government Code §66014.
5. The Grand Jury finds that the actual cost to provide service for the Building Division has not been determined. The actual cost to provide service must include the Building Division's budget in addition to other support costs provided by other city departments.

RECOMMENDATIONS:

The Grand Jury recommends the following . . .

1. The Grand Jury recommends that the City of Stockton use funds from the Building Division's surplus to conduct an audit to determine the actual cost to provide service. The cost to provide service should be used to estimate the fees for building permits and plan checking.
2. Combination permits and plan check fees be re-adjusted to a level that is justified by the cost to provide the service as required by law.
3. The City of Stockton use the surplus generated by the Building Division to satisfy the Building Division's needs before transferring excess funds to the General Fund.

RESPONSE REQUIRED:

Pursuant to Section 933.05 of the Penal Code:

The City of Stockton shall report to the Presiding Judge of the San Joaquin Superior Court, in writing and within 90 days of publication of this report, with a response as follows:
As to each finding in the report a response indicating one of the following:

- a. The respondent agrees with the finding.
- b. The respondent disagrees with the finding, with an explanation of the reasons therefore.

As to each recommendation, a response indicating one of the following:

- a. The recommendation has been implemented, with a summary of the action taken.
- b. The recommendation has not yet been implemented, but will be with a time frame for implementation.
- c. The recommendation requires further analysis, with an explanation of the scope of the analysis and a time frame not to exceed (6) six months.
- d. The recommendation will not be implemented, with an explanation therefore.