



# Monterey County

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## Board Order

Upon motion of Supervisor Salinas, seconded by Supervisor Parker and carried by those members present, the Board of Supervisors hereby:

Adopted Resolution No. 12-384 amending the Monterey County Fee Resolution to:

- a. Authorize the Director of Planning to consider and decide requests for waiver of land use appeal fees when the appellant is unable to afford the appeal fee due to appellant's financial condition; and
- b. Authorize the Appropriate Authority to hear appeals from the Director of Planning's decisions on land use fee waiver requests. (Fee Waiver Resolution/REF120049)

PASSED AND ADOPTED on this 10<sup>th</sup> day of July 2012, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Salinas, and Parker

NOES: None

ABSENT: Supervisor Potter

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on July 10, 2012.

Dated: August 13, 2012  
File Number: 12-643  
Revised: 01-25-13

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Hancock  
Deputy

**Before the Board of Supervisors in and for the  
County of Monterey, State of California**

**Resolution No. 12-384**

Resolution amending the Monterey County )  
Fee Resolution to Augment and Clarify Fee )  
Waiver Procedures..... )  
(REF120049/Fee Waiver Process) )

WHEREAS, state law authorizes the County to establish fees for the cost of processing land use entitlements, so long as such fees do not exceed the estimated reasonable cost of providing the service for which the service is charged;

WHEREAS, pursuant to state law, the Board of Supervisors has periodically established fees for the processing of land use entitlements (“land use application fees”), including fees for filing administrative appeals of land use decisions (“land use appeal fees”), and the current land use fee schedule includes fees for filing appeals of land use entitlements in the inland unincorporated area of the County, appeals of administrative determinations, and appeals of fee determinations;

WHEREAS, the land use appeal fees are imposed to cover a portion of the costs of processing the appeal, and in enacting the fees, the Board of Supervisors found that the land use application fees and land use appeal fees do not exceed the estimated reasonable cost of processing the land use applications and appeals;

WHEREAS, the Board of Supervisors may, in the exercise of its police powers, waive land use application fees, including land use appeal fees, when policy or other reasons dictate that a waiver of fees is appropriate;

WHEREAS, on August 29, 2000, the Board of Supervisors adopted Resolution No. 2000-342 authorizing the County’s Director of Planning to grant requests for waivers of application and appeal fees for discretionary land use permits and building permits if the fee waiver request meets certain criteria and authorizing the Monterey County Planning Commission to consider all land use fee waiver requests not meeting the specific criteria, a copy of said resolution being attached hereto as Exhibit 1 and incorporated herein by reference;

WHEREAS, the existing land use fee waiver process allows appellants to request a fee waiver due to inability to pay, but the Board of Supervisors desires to make explicit that those who are genuinely unable to afford the fee are not barred from filing a land use appeal due to their financial condition;

WHEREAS, the Board of Supervisors desires to augment the criteria under which the Director of Planning has authority to grant a fee waiver to include grant of a waiver of land use appeal fees when the appellant provides evidence that the appellant is unable to afford the appeal fee due to appellant’s financial condition, provided that the appellant provides evidence in support of the fee waiver request such as evidence demonstrating that appellant would qualify for a waiver of court fees and costs pursuant to California Government Code section 68632 because of his or her financial condition;



WHEREAS, questions have arisen in the implementation of Resolution No. 2000-342 as to which County hearing body may hear appeals from the Director's fee waiver decisions, and therefore, the Board of Supervisors desires to clarify that the "Appropriate Authority" who is designated by the Monterey County Code to hear an appeal of a land use decision is also authorized to hear and decide appeals from the Director's decisions on fee waiver requests.

WHEREAS, the fees to which this waiver applies are not a tax and are exempt from voter approval pursuant to subparagraphs (1) through (3) and subparagraph (6) of section 1 of Article 13C of the California Constitution (Proposition 26), and this fee waiver does not result in increased charges and fees to other land use permit applicants, as the loss of revenue will be borne by the County's General Fund;

WHEREAS, this action related to fee waivers is statutorily exempt from the California Environmental Quality Act pursuant to section 21080(b)(8) of the Public Resources Code because the fees are charges to cover operating expenses;

WHEREAS, Section 1.40.010 of Chapter 1.40 of the Monterey County Code provides that all fees, penalties, refunds, reimbursements, and charges of any kind by the County may be adopted by resolution or may be designated in the Monterey County Fee Resolution;

WHEREAS, the Board intends that this resolution shall augment Resolution No. 2000-342 and that the Monterey County Fee Resolution shall incorporate the procedures specified by this resolution.

### **DECISION**

NOW, THEREFORE, based on all of the above facts and circumstances, the Board of Supervisors does hereby resolve as follows:

1. The Board of Supervisors hereby authorizes the Director of Planning to consider and decide upon requests from appellants for a waiver of land use appeal fees when the appellant provides evidence that appellant is unable to afford the appeal fees due to appellant's financial condition, provided that the appellant provides evidence in support of the fee waiver request such as evidence demonstrating that appellant would qualify for a waiver of court fees and costs pursuant to California Government Code section 68632 because of his or her financial condition.
2. The hearing body designated by the Monterey County Code as the Appropriate Authority to hear an appeal of a land use decision is also hereby authorized to hear and decide appeals from the Director of Planning's decisions on land use fee waiver requests.
3. This resolution augments Resolution No. No. 2000-342, and establishes Article 14.D of the Monterey County Fee Resolution, which shall incorporate the procedures specified in Sections 1 and 2 of this resolution

PASSED AND ADOPTED upon motion of Supervisor Salinas, seconded by Supervisor Parker, and carried this 10th day of July 2012, by the following vote, to wit,;

The Board hereby adopts this Resolution amending the Monterey County Master Fee Resolution to clarify the fee for appeals on land use issues and establish criteria for the waiver of fees in specific circumstances.

AYES: Supervisors Armenta, Calcagno, Salinas, and Parker

NOES: None

ABSENT: Supervisor Potter

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on July 10, 2012.

Dated: August 15, 2012  
File Number: 12-643  
Revised: January 25, 2013

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Hancock  
Deputy