



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: RES 25-013

February 04, 2025

Introduced: 1/23/2025

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Resolution

Consider adoption of a resolution to:

- a. Find that modification of land use permit application fees is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15273 and 15378(b)(4) of the CEQA Guidelines; and
- b. Amend Article XVII of the Monterey County Fee Resolution relating to County Counsel land use permit application fees.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution (Attachment A) to:

- a. Find that modification of land use permit application fees is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15273 and 15378(b)(4) of the CEQA Guidelines; and
- b. Amend Article XVII of the Monterey County Fee Resolution relating to County Counsel land use permit application fees.

SUMMARY:

The Board of Supervisors has adopted application fees to cover a portion of the cost of County staff time spent processing applications for land use and building permits. The County Counsel component of these fees, set out in Article XVII of the Monterey County Fee Resolution, recovers a portion of the cost of County Counsel staff advising County departments on processing of land use permit applications and associated work. With one exception, these County Counsel fees have not been updated since 2019. The proposed amendment would update the fees to reflect County Counsel's current hourly rate, align the fees with a modification to the fee structure already made by County Housing and Community Development (HCD), convert most "deposit" fees to flat fees to streamline fee collection, and make other minor adjustments, as more fully described below.

DISCUSSION:

Applicants for land use permits and entitlements and building permits pay application fees, which are the sum of several County departments' fees to cover a portion of the cost of staff time spent processing these permits and entitlements. County Counsel fees make up a small component of the total fees charged to permit applicants. HCD is the collection point for the applicant and administers the fees.

County Counsel's fees were last fully updated in conjunction with other land use departments' permit fees in 2019. (Resolution No. 19-318, adopted September 17, 2019.) In 2021, the Board approved changing the Commercial Cannabis permit fee across departments from an hourly charge to a flat fee.

(Resolution No. 21-132, adopted May 11, 2021). Except for this Commercial Cannabis permit fee, County Counsel fees have not been updated since 2019 and are in need of an update to reflect currently hourly rates and to align with HCD's 2023 fee revision. County Counsel is also proposing some revisions to streamline the processing of its fees.

The proposed Board resolution is attached as Attachment A. Article XVII with the proposed amendments to County Counsel fees is attached as Exhibit 1 to the resolution. Attachment B shows the revisions to existing fees in redline format.

The main proposed changes are as follows:

1. County Counsel is proposing to change the hourly rate used in the fees from \$223 to \$324 per hour to reflect County Counsel's current billing rates. The \$223 rate is based on County Counsel's July 2018 rates. The proposed \$324 rate is the fully burdened labor rate for Deputy County Counsel IV, Step 7, as of July 2024.
2. County Counsel is proposing to change the fee for condition compliance and mitigation monitoring from an hourly/ "deposit" (billed) fee to flat fees, with the amount of the flat fee varying depending on the complexity of the permit type. This change aligns with the change to condition compliance and mitigation monitoring fees which the Board adopted for HCD's Planning Services and Building Services in 2023. (Resolution No. 23-145, adopted August 22, 2023, amending Articles IX and XIX of the Monterey County Fee Resolution.)
3. County Counsel is proposing to convert most of its "deposit"/hourly-based fees to flat fees. By way of background, flat fees are fixed, one-time fees based on the estimated reasonable cost, averaged across all applications for a particular permit type, of processing the permit/entitlement for which the fee is charged. By contrast, on matters for which a "deposit" is indicated, the fee is based on the actual processing time; the applicant pays the specified deposit up front and is billed subsequently to cover the specific time spent. Under the existing adopted fee articles, the land use departments, including County Counsel, charge flat fees for some permits and "deposit"/billed fees for more complex projects, such as those requiring an Environmental Impact Report. County Counsel is proposing to change all its "deposit" fees to flat fees for all permit types except for the fee for development agreements. This change will result in more efficient administration of fees by reducing the staff time and work involved in collecting, tracking, and billing of the deposit fees. The change will also provide greater certainty to applicants of the cost of the County Counsel component of the fees.
4. Increases and decreases in fees: Many of the fees are increasing due to the update of County Counsel's hourly rate. Also, the applicant may pay more upfront for some permit applications for which the fee is changing from "deposit/billed" to flat fee; however, the eventual cost to applicant may be less, and will be more certain, for the fees that are changing from "deposit"/billed to flat fee. Some fees, such as the fees for Commercial Cannabis permit and Addendum, will decrease to reflect an expectation of requiring less County Counsel time. The County Counsel component of the appeal fee continues to be set to recover only an hour of time, which sets the fee substantially lower than actual cost.

The proposed fees are to recover staff costs and represent a conservative estimate of County Counsel time spent advising departments on processing land use permits and entitlements and

associated work. The proposed fees do not exceed the estimated reasonable cost of the work for which the fee is charged, in accordance with state law. (See, e.g., Government Code sections 65104, 65909.5, 66014.) To the extent the fees do not result in full cost recovery, the shortfall is subsidized by the County General Fund.

These fees are not a “tax” and are exempt from voter approval under section 1(e)(1)- (3), (5) and (6) of Article XIII C of the California Constitution (Proposition 26, excepting from the definition of “tax” charges imposed for specific benefit conferred/privilege/service or product; the reasonable regulatory costs to local government for issuing permits; the administrative enforcement thereof, fines and penalties and charges for violation of law; and property development charges). These fees are imposed for a specific government service provided directly to the applicant that is not provided to those not charged, are imposed for the reasonable regulatory costs to the County for issuing permits for property development and the administrative enforcement thereof, are no more than necessary to cover the reasonable costs of providing these services, and allocate costs in a manner that bears a fair and reasonable relationship to the applicant’s burden on, and benefits received from, the governmental activity.

If the Board adopts the resolution amending the fees, the fees as amended will go into effect 60 days after adoption, per Government Code sections 66016 and 66017.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

The proposed amendment to the County Counsel fee schedule is a modification to fees charged by the County for recovery of operating expenses associated with processing land use permits and is a governmental fiscal activity which does not involve a commitment to any specific project which may result in a significant environmental impact. As such, the proposed modification of fees is statutorily exempt from CEQA pursuant to Section 15273 and 15378(b)(4) of the CEQA Guidelines.

OTHER AGENCY INVOLVEMENT:

County Counsel has confirmed with County Housing and Community Development who collects and administers the fees that the proposed modifications are feasible to administer. The Board’s Budget Committee is scheduled to consider and make a recommendation on this fee update at its meeting on January 29, 2025, and County Counsel will present the Budget Committee’s recommendation at the February 4, 2025 hearing.

FINANCING:

In Fiscal Year 23-24, County Counsel received \$153,761.50 in land use application fees. The proposed modifications are likely to increase cost recovery because of the update of the hourly rate from 2018 rates to current rates. The change from deposit/billed to flat fee will also likely reduce the administrative costs incurred by County Counsel and HCD.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The proposed modifications advance the administration of County services by increasing cost recovery and increasing administrative efficiency.

Mark a check to the related Board of Supervisors Strategic Initiatives

- ☐ Economic Development
- ☒ Administration
- ☐ Health & Human Services
- ☐ Infrastructure
- ☐ Public Safety

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Attachments:

Attachment A: Board Resolution

Exhibit 1 to Attachment A: Article XVII with the proposed amendment

Attachment B: Redline of Article XVII showing proposed revisions of existing fees