

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ADDING CHAPTER 2.21 TO THE MONTEREY COUNTY CODE RELATING TO THE
COUNTY COUNSEL, AMENDING CHAPTER 2.32 OF THE MONTEREY COUNTY
CODE RELATING TO CERTAIN CONTRACTS AND THE COUNTY PURCHASING
AGENT, AND AMENDING CHAPTER 5.16 RELATING TO CLAIMS, LITIGATION
AND INSURANCE PROCUREMENT**

County Counsel Summary

This ordinance adds Chapter 2.21 to the Monterey County Code to set forth more specifically the role and duties of the County Counsel and the Office of the County Counsel. This ordinance also amends Chapter 2.32 of the Monterey County Code to: 1) authorize the District Attorney, Public Defender, and County Counsel to engage independent contractors for expert, legal, and other services where the aggregate cost does not exceed \$100,000 if certain budgetary conditions are met; and 2) clarify the exceptions to the County Purchasing Agent's authority to engage independent contractors, specifically excepting contracts for legal services and certain other specified types of services. Finally, this ordinance amends Chapter 5.16 of the Monterey County Code to clarify the process of filing claims, the settlement of claims and litigation, and the procurement of insurance.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Chapter 2.21 is added to the Monterey County Code to read as follows:

CHAPTER 2.21 COUNTY COUNSEL

2.21.010 Intent and Purpose.

The County of Monterey has an appointed County Counsel in lieu of receiving legal services from the District Attorney. It is appropriate to set forth more specifically in the County Code the role and duties of the County Counsel and the Office of the County Counsel.

2.21.020 Appointment and Removal.

The County Counsel shall be appointed and reappointed, and may be removed, only as set forth in California Government Code section 27641.

2.21.030 Qualifications.

The County Counsel shall be at all times a member in good standing of the State Bar of California and licensed to practice law in the state of California. The County Counsel shall also be admitted to practice law in the United States District Court for the Northern District of California and the United States Court of Appeals for the Ninth Circuit, or shall seek

appointment to those jurisdictions immediately upon appointment.

2.21.040 Rights, Privileges, and Duties.

The County Counsel shall have and discharge all of the rights, privileges, and duties set forth in Chapter 12 of Part 3 of Division 2 of Title 3 of the California Government Code (commencing with Section 27640) and the rights, privileges, and duties of the District Attorney other than public prosecutor as set forth in Articles 2 and 3 of Chapter 1 of Part 3 of Division 2 of Title 3 of the California Government Code (commencing with section 26520).

2.21.050 Sole Legal Advisor.

A. Consistent with State law, the County Counsel shall be the sole legal advisor to the County, the Board of Supervisors, public entities for which the Board of Supervisors is the legislative body ("County related entities"), and all elected or appointed officers of the County or County related entities acting in the officers' official capacity. The County Counsel shall appoint such assistants and deputies as may be necessary to perform the duties of office, subject to the budgetary control of the Board of Supervisors.

B. Consistent with State Law authorizing appointment of a County Counsel, to avoid conflicting advice and to provide for consistent applications of the law, elected or appointed officers of the County and County related entities shall not have any authority to contract for legal services, and shall not seek or receive legal advice in their official capacity from anyone other than the County Counsel, except:

1. Upon the recommendation and concurrence of the County Counsel (a) when specialized legal services are necessary that the County Counsel's Office cannot provide; (b) the County Counsel determines that it is in the entity's or officer's best interest; or (c) in order to avoid an actual or potential conflict of interest in the representation of multiple parties; or

2. In the case of a disqualifying conflict of interest of the County Counsel, but then only if an appropriate ethical wall cannot be established that allows an assistant or deputy county counsel to provide legal advice.

C. The Board of Supervisors retains the authority granted by State law and may, upon 4/5 vote, retain outside legal counsel for the benefit of the County when:

1. Specialized legal services are necessary that the County Counsel's Office cannot provide;

2. The workload of the County Counsel's Office prevents adequate representation without short-term additional staff;

3. It is necessary to avoid an actual or potential conflict of interest in the representation of multiple parties;

4. There is a disqualifying conflict of interest of the County Counsel, but then only if an appropriate ethical wall cannot be established that allows an assistant or deputy county counsel to provide legal advice; or

5. The Board finds that it is in the best interest of the County.

D. Subject to the limitations on contracting authority set forth in this Code or state law, the County Counsel shall execute and manage all contracts for legal and related services

entered into for the benefit of the County, County related entities, and their elected or appointed officers.

2.21.060 Risk Management.

The County Counsel shall serve as the County Risk Manager, and shall discharge the duties of Risk Manager for the County of Monterey, including as set forth in the County Code, either directly or through designees. The County Counsel may organize the County Counsel's Office in a manner the County Counsel deems appropriate for the discharge of the County's risk management functions.

SECTION 2. Subsection F of section 2.32.030 of the Monterey County Code is amended to read as follows:

~~F. Engage independent contractors to perform services for the County and the offices thereof with or without the furnishing of material where the aggregate cost does not exceed one hundred thousand dollars (\$100,000.00); provided, however, that the foregoing shall not apply to the construction or repair of any building or structure enumerated in Section 25450 of the Government Code, nor shall the same apply to contracts to do work upon the public roads of the County, contracts to print legal transcripts, contracts for election supplies, contracts for expert services to be rendered the offices of the District Attorney, County Counsel, or Sheriff, contracts for appraisers' services, contracts for consultants and other experts employed directly by the Board of Supervisors, or contracts for other services which, by law, some other officer or body is specifically charged with obtaining, unless and until the officer, body, or Board has requested the Purchasing Agent to enter into such contract, and in such event the contract limits shall be that limit imposed by law upon the officer, body, or Board. (Government Code Section 25502.5)~~

Engage independent contractors to perform services for the County and the offices thereof with or without the furnishing of material where the aggregate cost does not exceed one hundred thousand dollars (\$100,000.00); provided, however, that the foregoing shall not apply to contracts for:

1. The construction or repair of any building or structure enumerated in Section 25450 of the Government Code;
2. Work upon the public roads of the County;
3. Election supplies;
4. Expert services to be rendered to the offices of the District Attorney, County Counsel or Public Defender;
5. Legal services;
6. Services associated with the conduct of litigation (as defined in California Government Code section 54956.9 (c)) to which the County, or a public entity for which the Board of Supervisors is the legislative body ("County related entity"), is a party;
7. Services associated with the prosecution of cases by the District Attorney, or the defense of cases by the Public Defender;
8. Appraisers' services;
9. Consultants and other experts employed directly by the Board of Supervisors; or

10. Other services which, by law, some other officer or body is specifically authorized to or charged with obtaining, unless and until the officer or body has requested the Purchasing Agent to enter into such contract, and in such event the contract limits shall be that limit imposed by law upon the officer or body.

SECTION 3. Section 2.32.035 is added to the Monterey County Code to read as follows:

2.32.035 Specific Contracts.

Notwithstanding any other provision of this Chapter:

A. The District Attorney shall have the authority to engage independent contractors for expert and other services associated with the prosecution of cases within the District Attorney's authority where the aggregate cost does not exceed one hundred thousand dollars (\$100,000.00) and provided that sufficient funds for such services have been appropriated in the District Attorney's budget.

B. The Public Defender shall have the authority to engage independent contractors for expert and other services associated with the defense of cases within the Public Defender's authority where the aggregate cost does not exceed one hundred thousand dollars (\$100,000.00) and provided that sufficient funds for such services have been appropriated in the Public Defender's budget.

C. The County Counsel shall have the authority to engage independent contractors for:

1. All legal services provided to the County or a County related entity where the aggregate cost does not exceed one hundred thousand dollars (\$100,000): and

2. Expert and other services associated with (a) the assessment and processing of claims against the County, its related entities, or their officers or employees, or (b) the conduct of litigation (as defined in California Government Code section 54956.9 (c)) to which the County, a County related entity, or their officers or employees are a party, and where the aggregate cost does not exceed one hundred thousand dollars (\$100,000.00). Such services may be paid, as appropriate, from the following sources, provided sufficient funds have been appropriated:

a. The County Counsel's budget;

b. The Risk Management General Liability Internal Service Fund;

c. The Risk Management Workers' Compensation Internal Service Fund;

d. Another Risk Management Enterprise Fund as established by the Board of Supervisors;

e. Another department's budget that is responsible for such costs and agreed to by the department, County Administrator or the Board of Supervisors, as appropriate; or

f. The Board of Supervisors otherwise makes available sufficient funds.

SECTION 4. Section 5.16.010 of the Monterey County Code is amended to read as follows:

5.16.010 Filing requirement.

~~All claims against the County shall be filed with the Clerk of the Board of Supervisors. The Clerk of the Board of Supervisors shall transmit copies of all such claims to the Risk Manager. For the purpose of this Chapter, the term "Risk Manager" shall mean the person designated as the Risk Manager within the Office of the County Counsel, provided, however, that the Risk Manager shall act under the direction of the County Counsel and that the County Counsel is authorized to act in lieu of the Risk Manager in the performance of the Risk Manager duties set forth in this Chapter. Any claim or lawsuit may be submitted to the Board of Supervisors for informational purposes, for approval, or for denial. -All claims against the County shall be in the format prescribed by State law and filed with the Clerk of the Board of Supervisors including those claims enumerated in California Government Code section 905, et. seq., except those claims exempted by Federal or State law. The Clerk of the Board of Supervisors shall transmit copies of all such claims filed with the Clerk to the County Counsel and the County Administrative Officer (CAO), or their designee.~~

SECTION 5. Section 5.16.020 of the Monterey County Code is amended to read as follows:

5.16.020 Processing of claims and lawsuits against the County.

A. ~~Risk Manager Review. The Risk Manager~~Consistent with State law duties to attend and oppose claims and litigation, the County Counsel or designee shall evaluate the sufficiency and form of all claims and lawsuits against the County and give notices relative to any deficiency of such claims to the claimant. The Risk Manager~~County Counsel or designee shall have the discretion to have all such claims and lawsuits investigated and shall prepare an investigative report and, and make a recommendation relative to each such claim. The Risk Manager and lawsuit. The County Counsel or designee shall determine whether the claim has been timely filed, and if the Risk Manager~~County Counsel or designee determines that the claim was not timely filed, the Risk Manager~~they shall notify the claimant of that determination. The County Counsel is authorized and directed to establish and maintain administrative procedures with respect to the processing and assessment of claims and lawsuits, including the confidential coordination of case facts and related information. The procedures shall entail reasonable use of the principle of privileged attorney-client communication and other legal bases for confidentiality in the defense or adjustment of all claims as provided by law.~~Such administrative procedures shall be followed by any third-party administrator retained by the County to assist in the handling and processing of claims and lawsuits.

B. ~~Risk Manager Rejection and Settlement Authority. The Risk Manager may approve for payment~~As permitted by Government Code section 935.4, the County Counsel or designee, upon approval of the CAO or designee, may approve for payment any liability claim that is or lawsuit settlement not in the form of a lawsuit amounting to exceeding fifty thousand dollars (\$50,000.00) or less, and may deny any claim amounting to not exceeding two hundred fifty thousand dollars (\$250,000.00) or less.~~_. The Risk Manager~~County Counsel or designee, upon approval of the Human Resources Director or designee, or upon approval of the CAO or

designee, may approve for payment any workers' compensation claim from an employee of the County, or the settlement of any workers' compensation lawsuit against the County, for not exceeding one hundred fifty thousand dollars (\$150,000.00) or less. The Risk Manager~~County Counsel~~ may authorize third-party administrators to reject, settle or compromise claims and lawsuits not exceeding ten thousand dollars (\$10,000). Claims against the County that by law need not be submitted to the Clerk of the Board may also be rejected, compromised and settled pursuant to this Section in the same manner as claims submitted to the Clerk. Such claims may include, but are not limited to, labor union memoranda of understanding (MOU) grievances, civil rights claims, and employment disputes. Annually, the County Counsel shall prepare and submit claims and lawsuit settlement activity reports to the County Administrative Officer~~CAO~~ and Board of Supervisors, reflecting claims and lawsuit settlement activity. Any claim or lawsuit may be submitted to the Board of Supervisors for informational purposes, for investigation, or for settlement approval or denial. As required by Government Code section 935.4, upon presentation of a written order from the County Counsel detailing the allowance, compromise or settlement of a claim or lawsuit pursuant to this Section, the Auditor – Controller shall promptly cause a warrant to be issued from the appropriate fund in the County treasury in the amount for which a claim or lawsuit has been allowed, compromised, or settled. Notwithstanding the foregoing, upon order of the Board of Supervisors, the County may advance funds to a contracted third-party administrator for the purpose of making payment on an allowance, compromise or settlement of a claim or lawsuit as directed by the County Counsel.

C. Board of Supervisors' Review. For all claims or lawsuits not disposed of pursuant to Subsections A or B of this Section, the ~~Risk Manager~~County Counsel or designee shall prepare and submit, as soon as practicable, a report to the Board of Supervisors either in open session or in closed session, at the County Counsel's election, together with a recommendation that such claim or lawsuit be approved, compromised, further investigated, or denied. The Board shall then take such action upon the claim or lawsuit as it determines to be~~determines to be~~ appropriate.

D. Notification of Insurance Carriers. ~~The Risk Manager shall notify and send copies of all claims which are determined by the Risk Manager to potentially be covered by insurance to the insurance carrier which provides coverage to the County, and shall be the County's liaison with such carriers for the purpose of any claim involvement.~~County Counsel or designee shall notify the claimant or litigant in writing, or in a manner that is otherwise is appropriate, of any decision to reject or approve the settlement of any claim or lawsuit, or other direction from the Board of Supervisors.

E. Administrative Procedures and Confidentiality. ~~The Risk Manager shall notify the claimant in writing of any decision to reject or approve the settlement of any claim, or other direction from the Board of Supervisors, and shall cause payment to be made for approved claims under this Section. In order to protect the best interest of the County and the officers, employees, and agents of the County, with regard to the investigation, defense, or adjustment of applicable claims against the County or its employees, or agents, the Risk Manager, in coordination with the County Counsel, is directed to establish and maintain administrative procedures with respect to the confidential coordination of case facts and related information. The procedures shall entail reasonable use of the principle of privileged attorney-client communication and other legal bases for confidentiality in the defense or adjustment of all claims as provided by law. As necessary or appropriate, the County Counsel or designee shall notify and send copies of all claims and lawsuits to the insurance carrier providing relevant~~

coverage to the County, and the County Counsel or designee shall be the County's liaison with such carriers for the purpose of any claim or lawsuit assessment and processing. The County Counsel may authorize third-party administrators, if any, to notify insurance carriers.

F. ~~Legal Defense of Claims.~~ Claims and lawsuits filed against the County which are not covered by insurance, or which are within the County's self-insured retention, shall be defended by the County Counsel or Assistant or Deputies County Counsel as designated by the County Counsel; private attorneys designated by the County Counsel in consultation with the Risk Manager or as otherwise directed by the Board of Supervisors. Authorized legal defense; or independent counsel as coordinated by County Counsel with appropriate insurance providers. Authorized legal Defense costs in conjunction associated with the defense of such claims or lawsuits shall be paid from one of the following sources: (1) the Risk Management General Liability Internal Service Fund under the authority and control of the Risk Manager except as otherwise directed; (2) the Risk Management Workers' Compensation Internal Service Fund; (3) another Risk Management Enterprise Fund as established by the Board of Supervisors; (4) a departmental budget that is responsible for such costs and agreed to by the department or the County Administrative Officer; or (5) such other source as may be directed by the Board of Supervisors.

G. The County Counsel or designee is authorized to bind and contract for all insurance and related coverage for the County and County related entities. Insurance and insurance related coverage includes participation in and agreements with insurance pools, risk pools and joint powers agency programs. Actions by the County Counsel are subject to ratification by the Board of Supervisors.

SECTION 6. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 7. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ____ day of _____, 20____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Louis Alejo, Chair
Monterey County Board of Supervisors

A T T E S T

Nicholas E. Chiulos
Acting Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

WENDY S. STRIMLING
Senior Deputy County Counsel