



Legislation Details (With Board Report)

**File #:** RES 19-150      **Name:** Public hearing to consider adoption of a resolution to amend Article 14.D of the Monterey County Fee Resolution to update the Land Use Fee Waiver Policy, effective December 6, 2019.

**Type:** BoS Resolution      **Status:** Scheduled PM

**File created:** 10/25/2019      **In control:** Board of Supervisors

**On agenda:** 11/5/2019      **Final action:**

**Title:** Public hearing to consider adoption of a resolution to amend Article 14.D of the Monterey County Fee Resolution to update the Land Use Fee Waiver Policy, effective December 6, 2019.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Board Report, 2. Attachment A-Draft Resolution, 3. Attachment B-Existing Policies, 4. Attachment C-Recommended Changes\_20190923\_SEE092319-reh102519AC, 5. Completed Board Order Item No. 38

Date	Ver.	Action By	Action	Result
11/5/2019	1	Board of Supervisors	received	

Public hearing to consider adoption of a resolution to amend Article 14.D of the Monterey County Fee Resolution to update the Land Use Fee Waiver Policy, effective December 6, 2019.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution to amend Article 14.D of the Monterey County Fee Resolution to update the Land Use Fee Waiver Policy, effective December 6, 2019.

**Proposed CEQA action:** Statutorily exempt from environmental review pursuant to Section 21080(b)(8) of the Public Resources Code.

SUMMARY:

The Monterey County “Land Use and Building Services Fee Waiver Policy” (Fee Waiver Policy), set forth in Article 14.D of the Monterey County Fee Resolution, was initially adopted in August 2000 and last updated in July 2012. From July 1, 2016 through June 30, 2019, the County Resource Management Agency (RMA) started tracking waivers more closely. RMA found that the County waived approximately \$742,000 in Land Use permit fees based on the Board’s waiver policy, and this unrealized revenue resulted in reliance on the General Fund to augment the RMA budget. This finding prompted a review of the existing policy and resulted in this recommendation to update the Fee Waiver Policy.

Staff finds that the RMA Director’s authority should be limited to objective criteria to grant waivers without having to involve the Board. Currently, the policy affords the potential for subjective interpretation and the final action by the Director leading to contention if the request is denied. The existing policy assigns the Planning Commission as the appeal authority for fee waiver denial in most cases, putting the Planning Commission in a position to take a financial action, which more appropriately belongs with the Board of Supervisors.

RMA recommends that the Fee Waiver Policy be amended to reduce the number of categories and revise the RMA Director’s authority to waive fees. Items falling under RMA Director or designee delegated authority would be limited to discretionary permit fees under one of the following categories: *Financial Hardship*, *Government Agencies with a Reciprocal Waiver Agreement*, and *Special Policies Adopted by the Board of Supervisors*. The Director would not have authority to deny a request, but rather authority to approve limited types of waiver requests. Under the proposed policy, if the fee waiver request does not meet the criteria for Director approval, the Director would refer it to the Board of Supervisors. Also, rather than the Planning Commission making a

financial decision (appeal of Director's decision on a waiver), waivers would require Board consideration if the Director is not able to approve it based on that authority granted (not an appeal). Staff finds that the proposed update of the policy could result in higher retention of RMA permit revenue, which would reduce reliance on the General Fund.

This action is *statutorily exempt* from environmental review pursuant to Section 21080(b)(8) of the Public Resources Code because the fees are charges to cover operating expenses. This action proposes and clarifies procedures for waiver of fees; this action does not establish a new fee or have potential to increase fees.

#### DISCUSSION:

##### Current Fee Waiver Policy

In April 2019, RMA staff conducted an internal review of the current Fee Waiver Policy to determine the permit types and total annual fees waived over the last three (3) fiscal years. Staff also researched fee waiver policies in neighboring counties for comparison. Most of the comparison agencies reviewed limit fee waivers to two or three types with limited applicability. In contrast, Monterey County's existing Fee Waiver Policy includes an extensive list of nine (9) categories of eligible projects and applicants. The current policy and criteria descriptions are included in Attachment B-Existing Policies.

Additionally, the present policy includes vague, broadly defined criteria that make it difficult to determine if a project is eligible for a waiver. Under existing policies, County departments and government agencies can apply for a waiver, but no guidance is provided regarding the type of permits/applications eligible or the conditions under which a waiver may be approved. Under the non-profit and community groups category, terms such as "obvious public benefit," "substantial community support," and "reduce County costs," are open to interpretation and have the potential for inconsistent application. In addition, the current policy does not afford the ability to distinguish between outside funds (grants) that could reduce the impact on the General Fund versus transferring general funds from other County Departments. Many large-scale community projects utilize federal or state grant funding. Permit fees are generally an eligible cost under grant funding. By waiving fees for such projects, the County assumes a cost that typically is covered by other funding sources available to the applicant.

The existing policy allows fee waivers for applicants that meet a very-low income threshold; however, no information is provided as to the type of projects that are eligible. Other criteria grant fee waivers for inclusionary portions of proposed residential developments, when inclusionary housing is often a mandatory part of the design.

The number of requests for fee waivers has increased over the last few years. Approximately \$412,000 in fee waivers for discretionary fees, such as Planning fees, and ministerial permit fees, such as Building fees, were approved for government agencies and County departments from FY 2016/17 through FY 2018/19. Ministerial permit fees made up over ninety percent (90%) of eligible waivers for the last three fiscal years. In FY 2016-17, \$351,000 in ministerial permits were waived, including \$57,000 in emergency-related permit fees, such as the Soberanes Fire. In FY 2017-18, \$264,000 in ministerial permits were waived, including \$52,000 in emergency-related permit fees. In FY 2018-19, \$53,000 in ministerial permits were waived, including \$25,000 in emergency-related permit fees. Attachment C provides a table summarizing the above waived revenue, by year and category, and projects future assumed annual revenue if the proposed amendments to the Fee Waiver Policy were adopted.

##### Recommended Changes to the Fee Waiver Policy

The proposed updated policy reduces the number of permit/application types eligible for a fee waiver. The RMA Director or designee is authorized to review and issue certain waivers for low-income applicants, government agencies with an active reciprocal services agreement, and in emergency situations, where the Board has adopted special permitting guidelines. The updated policy establishes specific criteria detailing when the RMA Director or designee may issue a waiver for these permit categories.

Fee waiver requests other than those listed in the policy will be reviewed by the RMA Director and referred to the Board of Supervisors (or other approval authority if required by the Monterey County Code) for a decision. The Planning Commission will no longer be responsible for review or appeal of fee waivers, since approval of fee waivers is a budgetary decision with a direct impact to the County's revenue. This process will give the Board the opportunity to consider the financial impact of a waiver and determine if general funds can be used to offset the reduction in revenue. These changes will likely result in significantly higher retained permit fee revenue and reduced the need to backfill funding with General Funds. A discussion of recommended changes is included in Attachment C.

##### OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel reviewed and approved the proposed resolution as to form and legality. Staff consulted with the Health Department-Environmental Health Bureau, Monterey County Water Resources Agency, and County Administrative Office in the development of the proposed amendment to the Fee Waiver Policy and accompanying changes to the fee waiver process.

FINANCING:

Fee revenue is a critical source of revenue for County departments. Each year, RMA estimates fee revenue as part of its adopted budget. When fees are waived and anticipated revenue is not realized, reliance on the General Fund is required to fund the difference.

The current Fee Waiver Policy significantly impacts budgeted revenue. RMA provided fee waivers approximating \$742,000 over the last three fiscal years. The average annual waived fees for FY 2016/17 through FY 2018/19 equaled \$247,306, or three percent (3%) of total permit revenue. Given the more stringent permit waiver eligibility requirements in the proposed update to the Fee Waiver Policy, if adopted, RMA could expect to retain an additional three percent (3%) in permit revenue annually.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The recommended action supports the Board of Supervisors' Administration and Infrastructure Strategic Initiatives. Providing clear policy guidelines for staff and the public regarding eligible fee waivers increases efficiency and customer service. Direct involvement in the fee waiver process by Board of Supervisors results in greater budget control and transparency. Retention of budgeted fee revenue that directly funds RMA key positions involved with County short- and long-range planning, development, and building services supports efficient operations while reducing reliance on the General Fund.

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

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Approved by: Carl P. Holm, AICP, RMA Director

Attachments:

Attachment A-Draft Resolution

Attachment B-Current Fee Waiver Policy

Attachment C-Recommended Changes

(Attachments on File with the Clerk of the Board)