



AGENCY:	City Council/MID
MEETING DATE:	December 11, 2017
DEPARTMENT:	Admin/Finance
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## AGENDA ITEM SUMMARY

### **TITLE:**

**RECEIVE REPORT, CONDUCT PUBLIC HEARING, AND CONSIDER ADOPTION OF THE FOLLOWING:**

- 1. CITY COUNCIL RESOLUTION ADOPTING UPDATED FEES FOR VARIOUS PLANNING AND DEVELOPMENT SERVICES**
- 2. JOINT CITY COUNCIL/IMPROVEMENT DISTRICT RESOLUTION ADOPTING UPDATED FEES FOR MISCELLANEOUS CITY/DISTRICT SERVICES**

### **ISSUE:**

The City of Fort Bragg charges fees to offset the cost of providing various services and those fees are reviewed each year to assure that full cost-recovery is provided consistent with established City Council/Improvement District Board policies. If approved, the updated fee schedule presented herein would take effect on February 9, 2018.

### **ANALYSIS:**

Staff time and other costs incurred in conducting City business (such as processing of development and other applications, inspections, agenda and packet preparation, and most other services) are generally measurable and are provided for the benefit of individuals as opposed to the benefit of the community as a whole. Hence, fees for these activities are not taxes, but rather, they are fees for services.

At the public hearing for this agenda item at the November 27, 2017 City Council meeting, a number of questions were raised regarding the fee schedule. After reviewing the questions and the City's methodology, staff has modified this staff report to provide additional information for the City Council. It is the City's obligation to justify the cost of a fee as the reasonable cost of providing its services. The City process is to look at each fee, and to have the individuals that actually perform tasks enter a time for performance into a spreadsheet that is then used to compile all aspects of the City's personnel costs for each fee. The personnel costs include the direct and indirect overhead costs to the City, and the final fee also includes, when applicable, any routine costs that are in addition to personnel costs.

A leading California case that looked at the basis of a fee as opposed to a special tax is *Griffith v City of Santa Cruz*, 207 Cal App 4<sup>th</sup> 982 decided in 2012. The court in that case set forth important points about City fees. First the general distinction between a special tax and a regulatory fee: "A 'special tax' under section 4 of California Constitution Article XIII A does not embrace fees charged in connection with regulatory activities which do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and are not levied for unrelated revenue purposes" (referencing *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 878).

Further referencing the *Sinclair Paint* case, the Court of Appeal stated:

"The Supreme Court explained: "The scope of a regulatory fee is somewhat flexible and is related to the overall purposes of the regulatory governmental action. ... The question of proportionality is not measured on an individual basis. Rather, it is measured collectively,

considering all rate payors. Thus, permissible fees must be related to the overall cost of the governmental regulation. They need not be finely calibrated to the precise benefit each individual fee payor might derive. What a fee cannot do is exceed the reasonable cost of regulation with the generated surplus used for general revenue collection. An excessive fee that is used to generate general revenue becomes a tax.”

The City is not required to track its time on a project by project basis and keep a detailed database of every employee’s time spent on a project to establish a fee. What is required is a level of analysis that represents more than a mere estimate. Reliance on the professional judgement of each staff member to establish an average amount of time spent on a particular category of project is completely appropriate. As with any average, some applications involve simple facts and little analysis, while others may take more time than average to process. The City fee schedule addresses this complexity issue by, in many cases, breaking down the processes and related fees into subparts reflective of major and minor projects, or administrative approvals vs those that must be processed through noticed public hearings.

The 2018 fee schedule update includes the following noteworthy changes:

#### Planning & Development Fees

- Most of the changes to the Planning & Development fees result from increased personnel costs.
- In a few instances, fees will go down—these reductions resulted from recalculation of average staff time associated with permitting activities. Notable fee reductions include a reduction in the cost of a Planning Commission hearing from \$1,115 to \$760 and reductions in Code Enforcement Fees.
- As directed by the City Council, new appeal fees exist for applicants appealing a Planning Commission decision to the City Council: \$15,000 for permits which require CEQA review and \$5,000 for permits which do not require CEQA review.
- A new fee of \$65 is proposed for assigning street addresses.
- Parking in-lieu fees continue to be waived based on a temporary moratorium approved by the City Council last year which expires on January 1, 2019.

#### Fees for Miscellaneous City Services

- No changes are proposed for the Old Rec Center Gym use fees or Town Hall use fees. These fees are now included under a new Parks & Facilities Usage Fees area of the Fee Schedule along with fees for special events in the Noyo Headlands Park and Pomo Bluffs Park.
- All Animal Care Fees remain unchanged.
- The AV Tech fee has been added to the Town Hall Fee schedule for rentals which include use of the sound system.
- Electric Vehicle Charging Station Fees are new this year. They include charging fees of \$1.50 per hour beginning with the 2<sup>nd</sup> hour of charging. The 1<sup>st</sup> hour remains free.

#### Public Safety Parking Citations

- Staff recommends that the Council consider modifying the cost of parking citations from \$35 to \$45. This change would bring the citation costs more in line with citations in other cities in the region.

- Citations of \$45 parking are included for non-EV vehicles parked in EV designated spaces and for any EV vehicles parked in a Charging Station for more than four hours between the hours of 8am and 7pm, as directed by the City Council.

#### Public Works Fees

- Water and Sewer capacity and connection fees as well as drainage impact fees are updated based on the Engineering News-Record Construction Cost Index which is 3.94% for 2017.
- Fees involving street closures for parades and events were simplified and are accounted through the encroachment permit process. Fees specific to the preparation of a street closure due to a parade or event have been removed as these fees have not historically been charged to local organizations hosting events in the downtown business district.
- Septic tank dump fees were removed as this is not a service the City currently offers or is expected to offer in the future.

#### Finance Fees

- Fees related to business licenses which are defined in the Municipal Code were removed from the fee schedule as they are considered taxes not fees. Fees intended to recover the City's cost of administering and processing business licenses remain on the Fee Schedule.

Following the conduct of a public hearing, staff recommends adoption of the updated fee schedule. To do so, two separate resolutions are necessary as follows:

#### **(1) Adopt City Council Resolution Adopting Updated Fees for Various Planning and Development Services** (Attachments 3 & 3a)

Modifications to planning and development fees are described in Government Code section 66014, which requires that the fees not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless the fee is submitted to and approved by a popular vote of two-thirds of those electors voting on the issue.

City staff has conducted an analysis of the planning and development fees collected by the City and the costs reasonably incurred in providing such services. The revised fees are listed in Exhibit "A" of the Resolution Adopting Updated Fees for Various Planning and Development Fees.

Government Code section 66016 establishes the requirements for public notice and a public meeting prior to adoption of new or amended fees. Notice was provided in accordance with these requirements (Attachment 5).

#### **(2) Adopt Joint City Council/Improvement District Resolution Adopting a Fee Schedule for Miscellaneous City Services** (Attachments 4 & 4a)

Modifications to fees for miscellaneous City services are governed by Government Code section 66018, which requires that a public hearing be held prior to action on a resolution adopting a new fee or increasing an existing fee. Staff conducted an analysis of the City's miscellaneous services and the costs incurred in providing those services and prepared Exhibit "A" to the Resolution Adopting a Fee Schedule for Miscellaneous City Services.

Since the fees charged for miscellaneous services are limited only to the amount necessary to cover the staff costs to provide the service, the fees are not a source of additional general fund revenues nor are they a "special tax" as described in Government Code section 50076.

A public hearing notice (Attachment 5) was published in accordance with Government Code section 66018, which requires publication twice in a local newspaper, with the first publication at

least 10 days prior to the public hearing. Notice was also provided in accordance with Government Code section 66016, which requires that notice be mailed at least 14 days prior to the public hearing to any interested party who files a written request for such notice.

**RECOMMENDED ACTION:**

Following the public hearing, take the following actions:

1. Motion to adopt City Council resolution adopting updated fees for various Planning and Development services;
2. Motion to adopt joint City Council/Improvement District resolution adopting a fee schedule for miscellaneous City/District services.

**ALTERNATIVE ACTION(S):**

1. Conduct the public hearing and make minor modifications to one or more of the resolutions prior to adoption.
2. Conduct the public hearing and direct staff to provide additional analysis or changes to the proposed resolutions for action at a future meeting.

**FISCAL IMPACT:**

Although the exact fiscal effect of the proposed fee changes cannot be accurately estimated, changes in the fees charged for various planning and development fees as well as miscellaneous City services reflect changes in the cost of providing those services.

**CONSISTENCY:**

These fee updates are consistent with established City Council policy requiring full cost-recovery for services provided.

**IMPLEMENTATION/TIMEFRAMES:**

The new fees will become effective 60 days after adoption of the Resolutions pursuant to California Government Code Section 66017(a), on February 9, 2018. The Consolidated Fee Schedule will be updated and distributed to City staff and will be posted on the City's website.

**ATTACHMENTS:**

1. 2017-2018 Fee Schedule Comparison
2. Master 2018 Fee Schedule
3. City Council Resolution Adopting Updated Fees for Various Planning and Development Services
4. Joint City Council/Municipal Improvement District Resolution Adopting a Fee Schedule for Miscellaneous City Services
5. Public Hearing Notice

**NOTIFICATION:**

None.