



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning &
Development
Department No.: 053
For Agenda Of: September 15, 2020
Placement: Set Hearing
Estimated Time: 10 mins. on 9/22/2020
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Lisa Plowman, Director, Planning and Development
Director(s) (805) 568-2086
Contact Info: Steve Mason, Assistant Director, Planning and Development
(805) 568-2070

SUBJECT: Proposed Amendment to Planning and Development Fee Ordinance for
Commercial Telecommunication Facilities Tier 2A (Small Cell Wireless
Facilities)

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

On September 15, 2020, that the Board of Supervisors set a hearing for September 22, 2020 to:

- a) Approve the introduction (first reading) of an Ordinance amending fees for the Planning and Development Department services; and
- b) Read the title and waive further reading of the Ordinance; and
- c) Continue the item to the administrative agenda of October 6, 2020 to:
 - i) Consider and approve the adoption (second reading) of an Ordinance amending fees for Planning and Development services (Attachment A); and
 - ii) Find that the proposed action is an administrative activity of the County, which will not result in direct or indirect physical changes in the environment and is therefore not a "project" as defined for purposes of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15273(a)(1) and 15378(b)(5) (Attachment C).

Summary Text:

On December 10, 2019, the Board of Supervisors adopted Ordinance Nos. 5093 and 5094 (Case Nos. 19ORD-00000-00003 and 19ORD-00000-00004), which revised the County Land Use and Development Code and Montecito Land Use and Development Code (respectively), and established new project tiers for Commercial Telecommunication projects. Similar changes to the Coastal Zoning Ordinance were also approved by the Board of Supervisors (Case No. 19ORD-00000-00005), but those changes are still under review by the California Coastal Commission and are not yet certified and therefore not yet in effect. Among the new tiers established, Tier 2 includes a new category for Small Cell Wireless facilities, which reduces the permit requirement for these projects from a Conditional Use Permit to a Director-level Development Plan. The changes were instituted due to Federal Communications Commission (FCC) modifications to permit processing timelines and proposed permit processing fees for certain Commercial Telecommunication project types.

In response to the FCC’s declaratory order issued in September 2018¹, Planning and Development proposes a Small Cell Wireless Facilities Fee Ordinance and a fixed fee structure not to exceed \$3,000 for Small Cell Wireless Facilities projects as noted in the table below. Tier 2A Small Cell Wireless Facility projects located in Coastal Zone are currently subject to a Conditional Use Permit, pending Coastal Commission certification.

Planning and Development Permit and Service Fees			
#	Fee Title	Planning Fee	Building Fee
TIER 2A - TELECOMMUNICATION SMALL CELL WIRELESS FACILITIES			
1	Tier 2A Small Cell Wireless Facility Development Plan - Director Review/(Conditional Use Permit – Coastal Zone)	\$2,000.00	
2	Tier 2A Small Cell Wireless Facility Zoning Clearance		
3	Tier 2A Small Cell Wireless Facility BAR Hearing - N/S/C		
4	Tier 2A Small Cell Wireless Facility Building and Safety Permits		\$1,000.00

Permitting fees associated with Small Cell Wireless Facility projects are proposed to be capped County-wide at an amount not to exceed \$3,000. The Planning and Development Department processes applications for Small Cell Wireless Facility projects and this fee ordinance amendment is proposing a fixed fee structure of \$3,000 to partially offset the costs associated with processing these projects. Due to the County-wide cap on fees associated with Small Cell Wireless Facility projects, all other County Departments will not receive permit fees (Encroachment Permits and/or Fire Protection Certificates) for these projects. Although the primary fiscal impact of this ordinance will be borne by Planning and Development, we estimate incidental losses of approximately \$2,000 or less per year on the following Departments: Public Works, Fire, and County Counsel. The Department of Public Works and the Fire

¹ On August 14, 2020, the United States Court of Appeals for the Ninth Circuit issued its opinion in *City of Portland v. United States*, -- F.3d --, 2020 WL 4669906 (9th Cir. Aug. 14, 2020), which affirmed the “presumptively reasonable” FCC fee limitations of \$500 or less for each new application, and recurring fees of \$270 or less per year per application. *Id.* at *7. The court further held that high fees constituted an “effective prohibition” in deploying 5G services to various jurisdictions and concluded that the “FCC therefore has easily met the standard of offering ‘more than a mere scintilla’ of evidence to support its conclusions regarding the prohibitive effect of above-cost fees.” *Id.* at 8 (internal citation omitted). Nonetheless, the court’s opinion does not foreclose jurisdictions being able to recover fees above the safe harbor provision; it simply precludes all above-cost fees while concurrently affirming the Declaratory Order’s presumptive fees as so clearly reasonable that justification was not necessary.

Departments only review a small portion of the total applications submitted for Small Cell Wireless Facility projects as only a fraction of those permits require either an Encroachment Permit or a Fire Protection Certificate. Permit modifications to Tier 2A Small Cell Wireless Facilities that are subject to Tier 1B Spectrum Act Facility Modifications are subject to additional fees because they constitute new, distinct permits.

Currently, Planning and Development's cost to process this project type averages approximately \$6,000, which includes Planning fees of approximately \$4,000 and Building and Safety fees of approximately \$2,000. Under the proposed fee structure up to \$3,000 of the County permit processing costs for Tier 2a Small Cell Wireless Facilities will be borne by the applicant.

The goal of the December 10, 2019 adopted Ordinance Nos. 5093 and 5094 is to identify permit areas that could be streamlined, increase efficiency in processing these permit types, and reduce the number of fees where possible. Streamlining the permit process will reduce the cost associated with processing these permits.

P&D requests that the Board of Supervisors amend Ordinance 4991 and add section Commercial Telecommunication Facilities Tier 2A (Small Cell Wireless Facilities) Fees and Costs to ensure the Department is consistent with the FCC declaratory order for Tier 2a Small Cell Wireless Facilities, revise the ordinance to grant the Board of Supervisors the authority to adjust or waive the fees as set forth in the proposed ordinance and as set forth in Exhibit to Attachment A of Ordinance 4991 should future adjustments become necessary.

Fiscal and Facilities Impacts:

Budgeted: Planning and Development's Fiscal Year 2020-21 budget does not anticipate reduced permitting fee revenues as a result of fee limitations imposed on Tier 2a for Small Cell Wireless Facilities. At this time, the annual permitting volume of Tier 2a Small Cell Wireless Facilities are estimated at 10 zoning and 10 building permits respectively. These permitting volumes will vary based on economic factors and policy decisions based on the volume of activity and the beneficiary of the service. The Planning and Development Department's estimated fiscal impacts for Tier 2a Small Cell Wireless Facility projects are \$60,000, partially offset up to \$30,000, assuming permitting volumes and the \$3,000 in fees paid by project applicant.

This change would become effective thirty days after the second reading.

There are no facilities impacts.

Special Instructions:

Planning and Development will satisfy all noticing requirements.

Direct the Clerk of the Board to return a fully executed copy of the adopted Ordinance and minute order to the Planning and Development Department, Attention: Crysta Rider.

The Planning and Development Department will publish the names of the members of the Board of Supervisors voting for and against the Ordinance Amendments in the Santa Barbara News-Press before the expiration of 15 days after its passage.

Attachments:

- A. Proposed Ordinance
- B. Ordinance 4991
- C. CEQA Notice of Exemption

Authored by:

Crysta Rider, Business Manager, Planning and Development