



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: June 28, 2022
Placement: Departmental
Estimated Time: 10 mins.
Continued Item: No
If Yes, date from: N/A
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Lisa Plowman, Director, Planning and Development
Director(s) (805) 568-2086
Contact Info: Jeff Wilson, Assistant Director, Planning and Development
(805) 568-2085

SUBJECT: Proposed Amendment, Case No. 22ORD-00000-00002, 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 June 28, 2022, staff recommends that your Board take the following actions:

- a) Approve the introduction (first reading) of an Ordinance amending fees for the Planning and Development Department services to cap fees County-wide at an amount not to exceed \$1,750; and
- b) Read the title and waive further reading of the Ordinance; and
- c) Continue the item to the administrative agenda of July 12, 2022 to:
 - i) Consider and approve the adoption (second reading) of an Ordinance amending fees for Planning and Development services to cap fees County-wide at an amount not to exceed \$1,750 (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:

The Planning and Development Department (P&D) proposes to revise Ordinance 4991 to reduce the current fixed fee of \$3,000 for Tier 2A Small Cell Wireless Facility projects to \$1,750.

In September of 2018, the Federal Communications Commission (FCC) issued a declaratory order, which included limitations to permit processing timelines and fees¹ for certain Commercial Telecommunication project types. In order to comply with the FCC’s limitations established by the 2018 declaratory order, the Board of Supervisors adopted changes to County zoning ordinances to reduce the permit requirement for projects affected by the declaratory order and also adopted changes to the County’s fee schedule to establish a fixed fee structure for those projects.

Specifically, 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 the Montecito Land Use and Development Code (respectively), and established new project tiers for Commercial Telecommunication projects. The Board of Supervisors also approved similar changes to the Coastal Zoning Ordinance under Ordinance No. 5095 (Case No. 19ORD-00000-00005) and the California Coastal Commission certified those changes on March 11, 2021.

Among the new County tiers established by the Board on December 10, 2019, Tier 2 includes a new category (Tier 2A) for “Small Cell Wireless” facilities, which reduced the permit requirement to comport with the FCC 2018 declaratory order. The intent was to streamline the permit process and reduce the County’s costs associated with processing these permits. On October 6, 2020, the Board of Supervisors adopted Ordinance No. 5118 (Case No. 20ORD-00000-00007), which established a fixed fee structure, not to exceed \$3,000, for Small Cell Wireless Facilities. To further align the department’s fees with the FCC 2018 declaratory order, P&D now proposes a revision to the fixed fee structure not to exceed \$1,750 for Small Cell Wireless Facilities projects as noted in the table below.

Planning and Development Permit and Service Fees			
#	Fee Title	Planning Fee	Building Fee
TIER 2A - TELECOMMUNICATION "SMALL WIRELESS FACILITIES"			
1	Tier 2A Small Cell Wireless Facility Development Plan - Director Review	\$1,000.00	
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		\$750.00

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.

Currently, P&D'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 \$1,750 of the County permit processing costs for Tier 2A Small Cell Wireless Facilities will be borne by telecommunication applicants, with the remaining \$4,250 per application to be borne by P&D. It is anticipated that P&D can carry these costs for the Fiscal Year 2022-23.

In the Fall of 2021 the Board of Supervisors directed P&D to revise the regulations for Small Cell Wireless Facilities to assist in further streamlining the permitting process. P&D staff is currently reviewing how other jurisdictions process Small Cell Wireless Facilities to help guide the County's process to more effectively streamline permitting and align associated costs. Preliminary research found that some jurisdictions require a roadway encroachment permit for these type of facilities instead of a zoning permit. Long Range Planning Division anticipates presenting these amendments to the Board of Supervisors during 2nd Quarter of Fiscal Year 2022-23. At the time the ordinance amendment is presented to the Board of Supervisors, P&D staff will provide an estimate of the costs to process those facilities under the amended regulations in order to determine the appropriate fees, but they would be \$1,750 or less.

P&D requests that the Board of Supervisors revise Ordinance 4991 to grant the Board 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: No. P&D's Fiscal Year 2022-23 budget does not anticipate substantial reduced permitting fee revenues as a result of the recommended Ordinance. At this time, the permitting volume of Tier 2A Small Cell Wireless Facilities is estimated at five zoning and five building permits per year. These permitting volumes will vary based on the volume of applications.

P&D's estimated fiscal impacts for Tier 2A Small Cell Wireless Facility projects are \$30,000, partially offset up to \$8,750, assuming permitting volumes and the \$1,750 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: Jeff Wilson.

The Planning and Development Department will publish the names of the members of the Board of Supervisors voting for and against the Ordinance Amendment 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:

Nereyda (Rey) Harmon, Senior Planner, Planning and Development