



Legislation Text

File #: 17-0389, **Version:** 1

County Counsel recommending the Board:

- 1) Approve the Billing Rates for County Counsel attorneys to invoice outside entities; and
- 2) Adopt and authorize the Chair to sign Resolution **069-2017** setting forth those rates.

FUNDING: Reimbursement to County.

DEPARTMENT RECOMMENDATION

Reason for Recommendation:

This recommendation will allow County Counsel to more fully recover its costs incurred in defending the County from challenges to development project approvals and, by utilizing a blended rate schedule, will streamline the process for recovery of such costs.

DISCUSSION / BACKGROUND

A standard condition of approval imposed on development projects requires the developer to defend and indemnify the County for any actions challenging the County's approval of the project. In the past, if a project approval was challenged, the County would tender the defense of the action to the developer and, upon the developer's acceptance of the defense, retain outside counsel to represent the County's interests in the action. In some circumstances, where the County's and developer's interests were not in conflict, the County and developer would be represented by the same attorney. In either case, the cost of such outside counsel would be borne by the developer pursuant to their obligation to defend and indemnify the County.

Since the County Counsel's office is now fully staffed, we have refrained from retaining outside counsel in such matters and, instead, have been using in-house attorneys to defend the County in challenges to development project approvals. Pursuant to the above-referenced defense and indemnify condition, the developer is obligated to reimburse the County for its costs in defending such matters, including costs incurred by the County Counsel's office. Having attorneys in the County Counsel's office represent the County is also more cost-effective for the developer because the rates charged by the County Counsel's office are generally well below the rates charged by private attorneys for similar services.

In order to streamline the process of recovering such costs and to bring County Counsel's billing practices in line with those utilized in the private sector, we developed a blended rate for each classification. In developing these rates, we conferred with the Auditor's office, who advised us that the rates should be no less than the internal A-87 rates for each attorney. Accordingly, the proposed rates reflect the internal costs for each attorney, as well as the additional support services required to properly manage a litigation matter. We did not develop a specific rate for the County Counsel because his costs are recovered via the office overhead charge that is spread among all of the attorneys in the office and included in the billing rates for each classification. The recommended hourly rates for each classification are as follows:

Chief Assistant County Counsel and Principal Assistant County Counsel: \$250

Senior Deputy County Counsel: \$230

Deputy County Counsel: \$190

To be clear, these rates would only be charged to outside entities who are required to defend and indemnify the County pursuant to a condition of project approval or other agreement. As a matter of practice, the rates would be confirmed and agreed to by the developer upon initiation of the litigation. Upon being served with a petition challenging approval of a development project, we will send a letter to the developer tendering the defense to the developer and disclosing the above-listed billing rates. The developer's acceptance of the tender of defense will confirm the developer's agreement to reimburse the County at the specified rates. In certain circumstances, the developer's obligation to defend and indemnify the County will be memorialized in a formal agreement.

Because costs change from year-to-year, County Counsel will bring these rates to the Board of Supervisors for approval each year after the internal billing rates have been determined and approved by the Auditor's office.

ALTERNATIVES

If the Board does not approve the proposed billing rates for outside entities, County Counsel will continue to recover costs based on each attorneys internal billing rate.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

N/A

CAO RECOMMENDATION

It is recommended that the Board approve this item.

FISCAL IMPACT / CHANGE TO NET COUNTY COST:

With estimates of work being billed in this fiscal year County Counsel anticipates it could possibly decrease its Net County Cost.

CLERK OF THE BOARD FOLLOW UP ACTIONS

N/A

ACTIONS TO BE TAKEN FOLLOWING BOARD APPROVAL:

Upon approval of the Board of Supervisors, County Counsel will send invoices to those outside entities that are required to defend and indemnify the County for costs incurred in defense of the County.

STRATEGIC PLAN COMPONENT

CONTACT

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