



Legislation Text

File #: 18-0864, **Version:** 1

County Counsel recommending the Board approve without change the previously-adopted billing rates for County Counsel attorneys to invoice outside entities for recovery of costs incurred in defending the County from challenges to development project approvals.

FUNDING: Reimbursement to County.

DEPARTMENT RECOMMENDATION

County Counsel recommending the Board approve without change the previously-adopted billing rates for County Counsel attorneys to invoice outside entities. This recommendation will allow County Counsel to continue to 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

On April 25, 2017, the Board of Supervisors approved Resolution No. 069-2017, which established billing rates to be charged by the County Counsel's office to outside entities with an obligation to defend and indemnify the County. At the time the Board of Supervisors approved that resolution, we indicated that, as a result of potential cost changes from year-to-year, we would 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. Although we are not proposing any changes in these billing rates, we are bringing this matter back to the Board of Supervisors for your continued review and approval.

To provide additional background on this matter, 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 approximately Fall 2016, the County Counsel's office has been regularly using in-house attorneys to defend the County in challenges to development project approvals. Our billing rates are confirmed and agreed to by the developer as part of the County's tender of defense. Pursuant to the developer's defense and indemnity obligation, during Fiscal Year 16-17, we recovered \$80,370 in attorney's fees and, in the current fiscal year to date, we have recovered \$25,580 in attorney's fees.

The billing rates charged by County Counsel are blended rates for each classification. In developing those 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 current rates reflect the internal costs

for each attorney as well as the additional support services required to properly manage a litigation matter. Our costs have not changed significantly since initial approval of those rates, so we are not proposing any changes at this time. However, should our costs change such that billing rate changes are required, we will return to the Board for review and approval of any such revised rates.

Accordingly, we recommend continued approval of the following hourly rates to be charged only to outside entities which are required to defend and indemnify the County:

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

Senior Deputy County Counsel: \$230

Deputy County Counsel: \$190

Resolution 069-2017 will remain in effect unchanged.

ALTERNATIVES

The Board could establish a different rate structure, which would necessitate a new resolution. County Counsel could also recover a portion of its costs based on each attorney's internal billing rate.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

N/A

CAO RECOMMENDATION / COMMENTS

It is recommended that the Board approve this item.

FINANCIAL IMPACT

The total amount of recovered costs are estimated at \$46,000 this fiscal year. Because the County billing rate is approximately 25% lower than the outside entity billing rate, it is estimated that use of these outside billing rates will result in approximately \$10,000 in additional cost recovery.

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.

CONTACT

David A. Livingston