

**EFFECTIVE DATE
OF ORDINANCE**

Month DD, YYYY

ORDINANCE NO. ____ N.C.S.

Introduced by: _____

Seconded by: _____

INTRODUCTION (FIRST READING) OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA AMENDING THE PETALUMA MUNICIPAL CODE TO ADD CHAPTER 4.50 ENTITLED “EXHAUSTION OF ADMINISTRATIVE REMEDIES FOR CHALLENGES TO FEES, CHARGES, AND ASSESSMENTS ON REAL PROPERTY” PURSUANT TO GOVERNMENT CODE SECTIONS 53759.1 AND 53759.2

WHEREAS, the California Constitution requires local agencies to follow certain procedures, including notice, hearings, and protest opportunities, when levying assessments and property-related fees and charges depending on the type of fee or assessment; and

WHEREAS, the Proposition 218 Omnibus Implementation Act sets out detailed procedures for local agencies to ensure compliance with these constitutional requirements; and

WHEREAS, on September 25, 2024, Governor Newsom signed into law Assembly Bill 2257 (AB 2257) which added Sections 53759.1 and 53759.2 to the California Government Code; and

WHEREAS, AB 2257 provides that, if a local agency, like a city, follows the required procedures, no person or entity may bring a legal challenge against a new, increased, or extended fee or assessment without first submitting a written objection to the agency that explains the reasons for alleging noncompliance; and

WHEREAS, AB 2257 requires that a local agency’s response to a written objection will affect how much weight a court gives to the evidence of the agency’s compliance with the constitutional rules on fees and assessments, but prohibits separate lawsuits solely regarding the adequacy of the agency’s responses; and

WHEREAS, AB 2257 specifies that when a local agency has complied with the required procedures, any legal challenge to the fee or assessment for failure to comply with constitutional requirements must be based on the official record of proceedings, unless otherwise specified by law; and

WHEREAS, AB 2257 does not prevent lawsuits challenging a local agency’s failure to implement a fee or assessment in the manner it was adopted; and

WHEREAS, AB 2257 includes necessary findings and declarations to support these provisions and are incorporated into this Ordinance as findings; and

WHEREAS, the City Council finds that adoption of this Ordinance is exempt from CEQA because: (i) it is not a project within the meaning of Public Resources Code, section 21065 because it has no potential to alter the physical environment; (ii) and pursuant to CEQA Guidelines section 15061(b)(3), the so-called “common sense” exemption, for this same reason; and

WHEREAS, this Ordinance is authorized by the City’s authority under California Constitution, article XI, sections 5 (charter cities), 7 (police power), and 9 (utility power) as well as Government Code section 53759.1.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Petaluma, as follows:

Section 1. Recital Findings The City Council hereby finds and determines the foregoing recitals to be true and correct and hereby incorporates them into this Ordinance as findings and determinations of the City Council.

Section 2. Exemptions from CEQA The City Council finds that adoption of this Ordinance is exempt from CEQA because: (i) it is not a project within the meaning of Public Resources Code, section 21065 because it has no potential to alter the physical environment; (ii) and pursuant to CEQA Guidelines section 15061(b)(3), the so-called “common sense” exemption, for this same reason.

Section 3. Amendment to Add Chapter 4.50 to the Petaluma Municipal Code. Chapter 4.50 entitled “Exhaustion of Administrative Remedies for Challenges to Fees, Charges, and Assessments on Real Property” of the Petaluma Municipal Code is hereby amended to read as follows:

Chapter 4.50 — Exhaustion of administrative remedies for challenges to fees, charges, and assessments on real property.

4.50.10 Scope.

The duty to exhaust administrative remedies imposed by this chapter extends to:

- A. any fee or charge subject to articles XIII C or XIII D of the California Constitution,
- B. any assessment on real property levied by the City, and
- C. the methodology used to develop and levy such a fee, charge, or assessment.

4.50.20 Definitions.

- A. “City Clerk” as used in this chapter means the City Clerk for the City of Petaluma or their designee.
- B. “Hearing” as used in this chapter means the hearing referenced in Section 4.50.070(D) of this section.

4.50.030. Duty to Exhaust Issues.

No person may bring a judicial action or proceeding alleging noncompliance with the California Constitution or other applicable law for any new, increased, or extended fee, charge, or assessment levied by the City, unless that person submitted to the City Clerk a timely, written objection to that fee, charge, or assessment specifying the grounds for alleging noncompliance. The issues raised in any such action or proceeding shall be limited to those raised in such an objection unless a court finds the issue could not have been raised in such an objection by those exercising reasonable diligence.

4.50.040. Procedures.

The City shall:

- A. Make available to the public any proposed fee, charge, or assessment to which this chapter is to apply no less than 45 days before the deadline for a ratepayer or assessed property owner to submit an objection pursuant to 4.50.040(D).
- B. Post on its internet website a written basis for the fee, charge, or assessment, such as a cost of service analysis or an engineer's report, and include a link to the internet website in the written notice of the Hearing, including, but not limited to, a notice pursuant to subdivision (c) of Section 4 or paragraph (1) of subdivision (a) of Section 6 of Article XIII D of the California Constitution.
- C. Mail the written basis described in paragraph 4.50.040(B) to a ratepayer or property owner on request.
- D. Provide at least 45 days for a ratepayer or assessed property owner to review the proposed fee or assessment and to timely submit to the City Clerk a written objection to that fee, charge, or assessment that specifies the grounds for alleging noncompliance. Any objection shall be submitted before the end of the public comment portion of a Hearing on the rate, charge or assessment.
- E. Include in a written notice of the Hearing, a statement in bold-faced type of 12 points or larger that:
 - 1. All written objections must be submitted to the City Clerk by the end of public comment period at the Hearing and that a failure to timely object in writing bars any right to challenge that fee, charge, or assessment in court and that any such action will be limited to issues identified in such objections.
 - 2. All substantive and procedural requirements for submitting an objection to the proposed fee, charge, or assessment such as those specified for a property-related fee under California Constitution, article XIII D, section 6(a) or for an assessment on real property under California Constitution, article XIII D, section 4(e).

4.50.060. Council Consideration; City Responses.

Before or during the Hearing, the City Council shall consider and the City shall respond in writing to, any timely written objections. The City Council may adjourn the Hearing to another date if necessary to respond to comments received after the agenda is posted for the meeting at which the Hearing occurs. The City's responses shall explain the substantive basis for retaining or altering the proposed fee, charge, or assessment in response to written objections, including any reasons to reject requested amendments.

4.50.070. City Council Determinations.

The City Council, in exercising its legislative discretion, shall determine whether:

- A. The written objections and the City's response warrant clarifications to the proposed fee, charge, or assessment.

B. To reduce the proposed fee, charge or assessment.

C. To further review the proposed fee, charge, or assessment before determining whether clarification or reduction is needed.

D. To proceed with the Hearing, to continue it, or to abandon the proposal.

Section 4. Severability If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be unconstitutional, unlawful, or otherwise invalid by a court of competent jurisdiction or preempted by State legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Petaluma hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful other otherwise invalid.

Section 5. Posting/Publishing of Notice The City Clerk is hereby directed to publish or post this Ordinance or a synopsis for the period and in the manner provided by the City Charter and any other applicable law.

Section 6. Effective Date The Ordinance shall become effective thirty (30) days after the date of its adoption by the Petaluma City Council.

INTRODUCED and ordered published and posted this 16th day of December 2024.

ADOPTED this DD day of Month YYYY by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Kevin McDonnell, Mayor

ATTEST:

APPROVED AS TO FORM:

Caitlin Corley, City Clerk

Eric Danly, City Attorney