



DATE: December 16, 2024

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Dylan Brady, Assistant City Attorney

SUBJECT: Adoption (Second Reading) of Ordinance No. 2899 N.C.S. 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

RECOMMENDATION

It is recommended that the City Council adopt (second reading) the attached 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.

BACKGROUND

On December 2, 2024, the City Council unanimously voted (6-0) to introduce the proposed ordinance provided in Attachment 1, Ordinance No. 2899 N.C.S. This ordinance implements AB 2257, which establishes a process requiring interested parties to file objections with the City before initiating legal action to challenge new or increased property assessments or fees under Article XIII D of the California Constitution. The ordinance and AB 2257 exclude taxes, cost recovery fees related to the City’s review and processing of permits and entitlements, fees for renting City facilities, fines or penalties for Municipal Code violations, and development fees.

The California Constitution mandates that local agencies follow specific procedures, such as providing notice, holding hearings, and offering protest opportunities, when levying new or increased assessments, property-related fees, and charges. The requirements, detailed in the Proposition 218 Omnibus Implementation Act, vary depending on the type of fee or assessment involved.

On September 25, 2024, Governor Newsom signed Assembly Bill 2257¹ (AB 2257) into law, adding Sections 53759.1 and 53759.2 to the California Government Code. This legislation enhances the accountability and transparency of local agencies, including the City of Petaluma, when adopting, increasing, or extending fees and assessments. Under AB 2257, a party cannot bring a legal challenge against a new or modified fee or assessment unless they first submit a written objection to the agency, explaining their reasons for alleging noncompliance with constitutional procedures. This measure ensures agencies are aware of potential issues before legal action is taken.

To fully benefit from AB 2257, local agencies must adopt an ordinance that formalizes the procedures and protections outlined in Government Code Section 53759.1. The proposed ordinance mirrors the provisions of this Section, ensuring enhanced public due process by allowing for appeals of the City's decisions. This added layer of transparency and accountability is designed to reduce the likelihood of unnecessary litigation.

DISCUSSION

One key issue addressed by AB 2257 is the challenge cities often face from individuals who file lawsuits against a new fee only after it has been adopted and customers have already been charged. These objections typically catch local agencies off guard, as they are raised for the first time once legal action is initiated. AB 2257 provides a solution by allowing agencies to establish formal procedures that require objections to be submitted prior to rate adoption. This gives cities an opportunity to address concerns or correct errors before finalizing rates. Once a public entity follows adopts an ordinance that implements AB 2257, only individuals who have filed a formal objection may challenge the rate in court, and the lawsuit's evidence will be restricted to the official record of proceedings.

Pursuant to the proposed Ordinance to challenge a new fee, the process involves several key steps. First, the City must provide public notice of the proposed fee, including a detailed explanation, at least 45 days before the deadline for objections. During this time, property owners or ratepayers can review the proposal and submit written objections specifying their concerns. These objections must be submitted to the City Clerk by the close of public comment at the required hearing.

The City Council will then consider all timely written objections, along with the City's responses, before making a determination. Council decisions may include modifying, reducing, further reviewing, or abandoning the proposed fee. If an objection is not filed during this process, legal challenges to the fee are barred, and any subsequent legal action is limited to the issues raised in the original objections. This ensures transparency and a thorough administrative review before finalizing any new fees or assessments.

This proactive approach ensures a meaningful opportunity to resolve ratepayer concerns before resorting to litigation, reducing the risk of unexpected legal battles and promoting transparency.

¹ <https://legiscan.com/CA/text/AB2257/id/3019220>

By adopting the proposed Ordinance, the City of Petaluma will align its practices with AB 2257, minimizing potential legal challenges while strengthening public trust in the City's fee and assessment processes.

For these reasons, it is recommended that the City Council approve the proposed Ordinance to ensure compliance with the new legal framework established by AB 2257. This Ordinance will take effect thirty days after the second reading.

PUBLIC OUTREACH

This Ordinance was introduced on December 2, 2024, which was a publicly-noticed meeting and was noticed in compliance with the Brown Act.

ENVIRONMENTAL REVIEW

The 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 and is an administrative process; (ii) and pursuant to CEQA Guidelines section 15061(b)(3), the so-called "common sense" exemption, for this same reason.

FINANCIAL IMPACTS

The proposed Ordinance amendments do not impose any direct costs. While they may lead to additional administrative hearings to assess the validity of the City's actions, the resources required for these hearings are expected to be minimal, especially when compared to the potential costs of defending a lawsuit.

ALTERNATIVES

Council can elect not to adopt the proposed Ordinance

ATTACHMENTS

1. Proposed Ordinance, Second Reading