



90267

DATE: March 20, 2018
TO: Board of Supervisors
FROM: Emily Harrison, Finance Agency Director
SUBJECT: Amend Fees in the Clerk-Recorder's Office

RECOMMENDED ACTION

Adopt Resolution of the Board of Supervisors of the County of Santa Clara Amending Fee Schedule for Products and Services of the Clerk-Recorder's Office. (Roll Call Vote)

FISCAL IMPLICATIONS

There is a decrease of approximately \$1,500 in revenues for FY 2018 and \$6,000 ongoing in each of the Clerk-Recorder's Electronic Recording Fund, Social Security Number Truncation Fund, and Document Storage Fund as a result of amending the recording fee for releases of liens by a political subdivision. There is an increase of approximately \$12,000 in revenues for FY 2018 and \$48,000 ongoing to the General Fund as a result of increasing the passport acceptance fee.

The revenue impact in FY 2018 will be reflected in the department's financial status reports to the Office of Budget and Analysis. The ongoing impact will be included in the County Executive's FY 2019 Recommended Budget.

REASONS FOR RECOMMENDATION

Since the Building Homes and Jobs Act was enacted on September 29, 2017 and took effect on January 1, 2018, governments and agencies around the State have been confronted with ascertaining whether the \$75 fee that Government Code Section 27388.1 requires to be collected in addition to any other recording fee applies to local, state, and federal agencies recording lien releases and certain other documents that are subject to the \$8 fee imposed by Government Code 27361.3.

On February 1, 2018, responding to a request for advice from the California Government Operations Agency, the Attorney General (AG) opined that state entities are exempt from the additional \$75 recording fee imposed by the Building Homes and Jobs Act.

The AG's analysis reiterated that pursuant to Government Code section 27361.3, recorders can charge the \$8 fee for recording lien releases and further clarified that, barring express

reference to the contrary in subsequently enacted fee statutes, the \$8 fee imposed by Section 27361.3 is a cap, not a base to which more recently enacted fees may be added.

Additionally, AB 110 was approved on March 8, 2018 before the State legislature as a budget trailer. AB 110 amends the Building Homes and Jobs Act to expressly exempt the federal government, the State, counties, municipalities and other subdivisions of the State from the \$75 fee imposed pursuant to Government Code Section 27388.1.

Therefore, the Clerk-Recorder's Office recommends decreasing the recording fee for releases of liens by a government agency to \$8.

In addition, Administration recommends increasing the passport acceptance fee from \$25 to \$35, effective April 2, 2018. The U.S. Department of State implemented an adjustment to the fee schedule for the Bureau of Consular Affairs on January 31, 2018 to better align the fees with the costs of providing the service.

CHILD IMPACT

The recommended action will have no/neutral impact on children or youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

BACKGROUND

On December 12, 2017, (Agenda Item No. 70), the Board of Supervisors approved a fee relating to the Building Homes and Jobs Act. Government Code 27388.1 authorizes a county recorder to charge a new fee of \$75 at the time of recording a real estate instrument, paper, or notice required or permitted by law to be recorded, not to exceed the amount of \$225.

In addition to the \$8.00 fee under Government Code 27361.3, the Clerk-Recorder's Office has been charging additional statutory recording fees with prior Board of Supervisor approval. These fees were approved prior to the recent AG opinion clarifying how Government Code 27361.3 should be read in conjunction with later enacted statutory fee provisions.

The Clerk-Recorder's Office has been a passport acceptance agency since 1997. As a passport acceptance agency, the Clerk-Recorder's Office reviews and accepts U.S. passport applications and collects the required fees. These fees are set by the U.S. Department of State and are divided into two parts. The application fee is payable to the Department of State and forwarded directly to U.S. Passport Services with the completed application. The acceptance agency fee is payable directly to the Clerk-Recorder's Office. As a passport acceptance agency, the Clerk-Recorder's Office must comply with the U.S. State Department in the collection of the newly increased fee.

CONSEQUENCES OF NEGATIVE ACTION

The Clerk-Recorder' Office will be out of compliance with the requirements of County

Ordinance Section A15-53, in establishing a fee schedule and subsequently notifying the public the change in fees. The County will be out of compliance with the Government Code for the collection of fees related to products and services in the Clerk-Recorder's Office.

STEPS FOLLOWING APPROVAL

Direct the Clerk of the Board to notify Belinda Gamutan, Clerk-Recorder's Office, when the action is completed.

ATTACHMENTS:

- Resolution Amending Fees in the Clerk-Recorder's Office (PDF)