October 31, 2018

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, CA 94612-4305

SUBJECT: ADOPT AN ORDINANCE ELIMINATING ALL ADULT FEES FOR CRIMINAL-JUSTICE INVOLVED PERSONS BY: AMENDING ADMINISTRATIVE CODE SECTION 2.42.190 TO PROHIBIT COLLECTION AND ASSESSMENT OF ADULT FEES FOR PROBATION SERVICES AND REPEALING FEE SCHEDULES FOR PROBATION, SHERIFF, AND PUBLIC DEFENDER AND INDIGENT DEFENSE COUNSEL

Dear Board Members:

RECOMMENDATIONS:

A. Adopt an ordinance: amending Section 2.42.190 of the Administrative Code to prohibit the assessment and collection of fees for adult probation services; repealing Resolution No. R-2011-142 prescribing adult fees collected by the Public Defender's Office; and repealing authorization of the assessment and collection of administrative and attendance fees for participation in the Sheriff's Office Work Alternative Program (SWAP);

B. Authorize the Auditor-Controller and County Administrator to allocate, in the current and future fiscal years, Assembly Bill (AB) 109 growth funds to the Public Protection departments to replace the lost fee revenue from the ordinance amendment, with the departments to absorb the cost of the lost fee revenue within their existing budgets if AB 109 growth funds are insufficient; and

C. Authorize the Auditor-Controller, Central Collections to notify the clients of the waiver of any outstanding adult probation, indigent defense, and public defense fees as described in the ordinance and refund any payments received after January 4, 2019.
SUMMARY/DISCUSSION/FINDINGS:

The Alameda County Probation Department (ACPD), Public Defender’s Office (PD), and Sheriff’s Office (ACSO), currently receive revenue from fees for services provided to adult clients of Alameda County. These fees are authorized, but not required, by California Penal Code (PC) 987.5 and 987.8 for the PD, PC 1203.1b for ACPD, and PC 4024.2 for the ACSO. These kinds of criminal justice financial obligations can have long-term effects that significantly harm the efforts of formerly incarcerated people to rehabilitate and reintegrate, thus compromising key principles of fairness in the administration of justice in a democratic society and engendering deep distrust of the criminal justice system among those overburdened by them. In recognition of the need to remove these barriers, the governmental partners have developed a plan and drafted an ordinance to amend Administrative Code section 2.42.190, to repeal language related to assessment and collection of adult fees for ACPD. Uncodified portions of the ordinance will repeal Resolution No. R-2011-142, which sets indigent defense fees for the PD, and the Board’s prior authorization for administrative and attendance fees for participation in ACSO’s SWAP program.

Upon the effective date of this ordinance, the Auditor-Controller Agency will immediately suspend the collection of adult probation, PD and Indigent Defense fees. In addition, ACSO will suspend the assessment and collection of SWAP fees. Written notices will be provided to impacted clients subject to these fees. The elimination of these fees will not affect the clients’ obligation to pay restitution to victims and associated state restitution fines as ordered by the courts.

If approved, the ordinance will become effective on January 4, 2019, under Government Code section 25123, which makes all county ordinances effective 30 days following final passage except in circumstances not present here.

COUNTY IMPACTS:

Adult administrative fees paid for specific services provided to those involved in the system. Services include programs, activities and staffing costs. The repeal of these adult fees represents a loss of revenue of $1.45 million annually for Alameda County. Details of departmental revenue reduction impacts are provided below:

Probation Department:

ACPD received an average of $562,813 in revenue, using a three (3) year average, due to the adult probation fees, pursuant to Administrative Code Section 2.42.190 and PC 1203.1b. The anticipated ongoing annual revenue loss of $562,813 supports adult probation supervision, investigations, as well as drug test/drug lab and diversion fees. These are required tools to ensure public safety and must be continued.

Public Defender’s Office:

Over the past three (3) years, PD received an average of $226,594 in revenue per year from the adult Public Defender Indigent Defense fee per Resolution No. 2011-142, which is the estimated annual revenue loss.
Sheriff’s Office:

SWAP is a community based, light manual labor program offered to low risk offenders in lieu of incarceration. Pursuant to California Penal Code 4024.2, the County can charge an administrative fee to offset the cost of the program. Over the past three (3) years, the ACSO received an average of $348,140 in SWAP revenue, which is the anticipated revenue loss. The program costs in excess of $600,000 a year to administer, above the fees collected.

Indigent Defense - Criminal Court Appointed Attorneys Program (CAAP):

The Auditor-Controller currently collects an average of $13,821 per year, based on a three (3) year average, in Indigent Defense fees for cases where a conflict exists precluding the Public Defender’s Office from providing representation. This revenue helps offset the cost for the contract needed to perform these services and would require replacement.

Auditor-Controller Agency:

The estimated revenue lost by the Auditor-Controller Agency is $300,000 annually. Staff in the Auditor-Controller Agency are assigned to the collection of a wide variety of fees, including these adult fees. This fee revenue was used to support a portion of staff salary and benefits costs. Once the ordinance is approved, affected staff will be assigned to other duties.

FINANCING:

The repeal of the adult fees translates into loss of revenue for the County of approximately $1.45 million annually based on the average fee collection for the past three (3) fiscal years. Of this revenue, approximately $300,000 supported administration and collection of fees by the Auditor-Controller Agency. The Auditor-Controller will explore other funding opportunities to replace this lost fee revenue. A breakdown of the estimated annualized revenue loss by department is in the chart below:

<table>
<thead>
<tr>
<th>Department</th>
<th>FY 15/16</th>
<th>FY 16/17</th>
<th>FY 17/18</th>
<th>3-Year Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sheriff's Office</td>
<td>$ 387,175</td>
<td>$ 329,276</td>
<td>$ 327,970</td>
<td>$ 348,140</td>
</tr>
<tr>
<td>Probation Department</td>
<td>$ 513,270</td>
<td>$ 616,069</td>
<td>$ 559,101</td>
<td>$ 562,813</td>
</tr>
<tr>
<td>Public Defender's Office</td>
<td>$ 234,134</td>
<td>$ 247,530</td>
<td>$ 198,119</td>
<td>$ 226,594</td>
</tr>
<tr>
<td>Indigent Defense - CAAP</td>
<td>$ 11,910</td>
<td>$ 16,523</td>
<td>$ 13,029</td>
<td>$ 13,821</td>
</tr>
<tr>
<td><strong>Total Program</strong></td>
<td><strong>$ 1,146,489</strong></td>
<td><strong>$ 1,209,398</strong></td>
<td><strong>$ 1,098,219</strong></td>
<td><strong>$ 1,151,369</strong></td>
</tr>
<tr>
<td>Auditor-Controller Agency</td>
<td>$ 280,961</td>
<td>$ 330,752</td>
<td>$ 292,744</td>
<td>$ 301,486</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>$ 1,427,450</strong></td>
<td><strong>$ 1,540,150</strong></td>
<td><strong>$ 1,390,963</strong></td>
<td><strong>$ 1,452,854</strong></td>
</tr>
</tbody>
</table>

For the Public Protection Departments, Departmental expenses are appropriated in the existing budget, but the repeal of the fees will cause a revenue shortfall in the current and future fiscal
years. The Public Protection Committee has recommended the use of AB 109 growth funds, if available, to replace the lost fee revenue in the current and future fiscal years. As AB 109 growth is dependent on State-wide sales tax receipts, and is not guaranteed, the Committee has instructed, and the Departments have agreed, that if AB 109 growth is not available the Departments will absorb the revenue loss within their existing budgets. The 3-year average figures in the table above will be the basis to determine lost revenue that can be backfilled with AB 109 growth funds, if AB 109 growth funds are available.

Additionally, over $26.0 million in outstanding fees will remain uncollected.

**VISION 2026 GOAL:**

This repeal, if approved, meets the 10X goal pathways of **Crime Free County** and **Eliminate Poverty and Hunger** in support of the County’s shared vision of a **Thriving and Resilient Population** by providing the reentry community with the opportunities to become contributing and productive members of the society, and reducing reliance on incarceration, and enhancing the safety, well-being and resiliency of vulnerable populations, by eliminating barriers.

Respectfully submitted,

Wendy Still, MAS  
Chief Probation Officer

Brendon D. Woods  
Public Defender

Gregory J. Ahern  
Sheriff/Coroner

Steve Manning  
Auditor-Controller/Clerk-Recorder

Attachment

cc: County Counsel

WS:kb
AN ORDINANCE AMENDING SECTION 2.42.190 OF THE ADMINISTRATIVE CODE TO ELIMINATE PROBATION FEES; REPEALING RESOLUTION 2011-142 REGARDING PUBLIC DEFENDER/CONFLICT COUNSEL FEES FOR REPRESENTATION OF INDIGENT ADULTS; AND ELIMINATING SHERIFF’S WORK ALTERNATIVE PROGRAM ADMINISTRATIVE AND ATTENDANCE FEES.

WHEREAS, criminal justice financial obligations like probation supervision and investigation fees, indigent defense fees, and fees associated with work release programs, can have long-term effects that can undermine successful societal reentry goals of the formerly-incarcerated, such as attaining stable housing, transportation, and employment; and

WHEREAS, this Board of Supervisors recognizes that criminal justice debt levied against low-income or indigent adults compromises key principles of fairness in the administration of justice in a democratic society and engenders deep distrust of the criminal justice system among those overburdened by such debt; and

WHEREAS, California Penal Code section 1203.1b authorizes but does not require a county to recover the actual costs for probation services in lieu of incarceration; and

WHEREAS, County of Alameda Administrative Code section 2.42.190 establishes probation department fees; and

WHEREAS, California Penal Code sections 987.5 and 987.8 authorizes but does not require the assessment of fees to cover the costs of appointed counsel; and

WHEREAS, the Board of Supervisors most recently authorized Indigent Defense Fees in Resolution 2011-142; and

WHEREAS, California Penal Code section 4024.2 authorizes but does not require a board of supervisors to assess an administrative fee on inmates of the county jail for costs associated with a county’s work release program; and

WHEREAS, the Board of Supervisors has approved the Alameda County Sheriff’s Office Sheriff Work Alternative Program (SWAP) and set administrative and attendance fees for participation in that Program; and

WHEREAS, the Board of Supervisors finds that it is in the best interest of the County, justice-involved adults, and the larger community to repeal the above-named adult fees; and

WHEREAS, it is also in the best interests of the County and the community that the Auditor-Controller be authorized to write-off all accounts receivable balances and close the associated fee accounts;
NOW, THEREFORE, the Board of Supervisors of the County of Alameda ordains as follows:

SECTION I

Section 2.42.190 of the County of Alameda Administrative Code is hereby amended to read as follows:

2.42.190 Probation Department fees.

Notwithstanding any prior County ordinance or resolution of the Board of Supervisors to permit assessment of probation fees and costs under California Penal Code section 1203.1b, neither the Probation Department nor any other County agency shall assess fees for probation services, or any other fees or costs authorized by Penal Code section 1203.1b.

SECTION II

The Public Defender schedule of fees authorized by this Board in Resolution No. 2011-142 on May 10, 2011 is hereby repealed.

SECTION III

The Sheriff's Office Alternative Work Program (SWAP) administrative fee and attendance fee, authorized by this Board by resolution as permitted by Penal Code section 4024.2 is repealed. Neither the Sheriff's Office or any other County agency shall assess SWAP administration or attendance fees.

SECTION IV

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the _____ day of ____________, 2018, by the following called vote:

AYES:

NOES:

EXCUSED:

President of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors,
By: ________________________________

Deputy Clerk

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

By: ________________________________

K. Scott Dickey
Assistant County Counsel