



# County of Santa Clara

## Roads and Airports Department

### Encroachment Permit Fees FAQ (frequently asked questions)

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The following is a listing of questions frequently asked of the Land Development Unit of the Roads and Airports Department regarding Encroachment Permit Fees. Following this list are the answers to the questions.

- Why are there Minor Encroachment Permit Fees?
- How often are the fees updated?
- How did the County develop these specific fees?
- What does “cost recovery” actually mean?
- Why are some fees waived, and others are not?
- Why are minor encroachment fees in this County different than the City fees? Aren't they all the same type of service?
- Since I already pay taxes, why am I paying these fees?
- What does “fair and equitable” mean?
- Do the fees I am paying comply with laws, statutes, rules or regulations?
- Why not just bill me for the time it takes to do the job?

#### 1. Why are there Minor Encroachment Permit Fees?

Encroachment permit fees are for services provided to review work that will occur in the County right-of-way. Services provided include permit processing, review, inspection, and administration by County Roads and Airports personnel.

The County Roads and Airports Department is required to recover full costs for administering the encroachment permit program, except where statutes prohibit cost recovery or as otherwise directed by the Board of Supervisors.

The costs of service for activities listed in the Minor Encroachment Permit Fee Schedule is driven primarily by staff time associated with the activities. A fully burdened hourly rate for County staff is applied to staff time for each permit to determine the maximum recoverable cost allowed through a user fee. Combining the calculated cost of service and the chosen cost recovery level yields the amounts listed in the approved Fee Schedule.

#### 2. How often are the fees updated?

The County periodically conducts a formal review of the Minor Encroachment Permit Fee Schedule in accordance with the County's Fees and Charges Policy, consistent with all County fees. The formal review includes a cost of service analysis to determine the estimated reasonable costs recoverable from permit fees under the standard for establishing user fees directed by the California State Constitution.

Periodically conducting a formal review enables the County to update fees to reflect current staff time and costs incurred, closely linked with the County's present-day practices and procedures. The formal review also is an opportunity for the County to consider its cost recovery levels in the Minor Encroachment Permit Fee Schedule: How much of the maximum cost should be borne by a fee payer, versus subsidized by the taxpayer?

#### 3. How did the County develop these specific fees?

The County conducted a formal study of the Minor Encroachment Permit Fees using in-house staff expertise and the assistance of an external user fee consultant. The study completed a cost of service analysis to determine the estimated reasonable costs recoverable from permit fees.

The cost of service analysis followed these steps:

- Model categories in the Fee Schedule to align with services presently performed, improved descriptions of current services, services properly categorized as a Minor Encroachment Permit, and any appropriate modifications to improve efficiency and clarity in the Fee Schedule.
- Model the staff organization performing services associated with Fee Schedule.
- Estimate the time spent by staff performing activities listed in the Fee Schedule, as well as activities which support those services.
- Reconcile staff time estimates with current annual workload to ensure reasonableness in the underlying time basis.
- Use County financial reporting to identify costs, including labor, supplies and materials, and overhead expenses.
- Determine fully burdened hourly rates for County staff.
- Apply hourly rates to estimated time on activities listed in the Fee Schedule, and calculate a maximum cost of service for each activity.
- Where appropriate, modify the charge basis for certain permit categories to proportionately align costs of service with permit applicant characteristics.
- Apply a cost recovery level to each permit category: 100% for permits targeted for maximum allowable cost recovery, or less than 100% for permits intended to be subsidized by other County revenues.
- Set the permit fee.

#### **4. What does “cost recovery” actually mean?**

Each fee in the Minor Encroachment Permit Fee Schedule can be compared to the maximum cost of service calculated for the activity. The amount of the fee in relation to the cost of service represents the permit’s “cost recovery” level. When a fee is set to 100% of its maximum cost of service, the permit is set to “full cost recovery.” Most permits in the Fee Schedule are intended to achieve full cost recovery, with some exceptions.

#### **5. Why are some fees waived, and others are not?**

The fee resolution gives the Director, Roads & Airports Department the discretion to waive encroachment permit fees for community-based and/or volunteer work within the road right-of-way that benefits the County roads and or the community at no cost to the applicant. These activities are typically cleanup, beautification, or improvements to the roads performed by the community or a Community Based Organization. Minor Encroachment Permit fees do not include additional overhead for community-based and/or volunteer work within the road right-of-way and are therefore subsidized by County road revenues as a community benefit.

Another consideration when setting a fee less than full cost recovery, or waive the fee altogether, is determining who benefits from the permitting activity: the applicant or the general public. There are a few permit categories, other than community-based and/or volunteer work, for which cost recovery is set below full cost and are therefore subsidized by County road revenues. Subsidized categories are those in which the County wants to encourage the permitted work to benefit the County road system and reduce potential liability from injury or accident claims.

#### **6. Why are minor encroachment fees in this County different than the City fees? Aren’t they all the same type of service?**

While it is standard practice for counties and cities throughout the State to collect fees to offset the cost of encroachment review and permitting, public agencies follow different procedures to perform service and use varying methodologies to calculate their fees. The Minor Encroachment Permit Fee Schedule for Santa Clara County reflects a methodology aligned with Santa Clara County’s own organization, procedures and practices, applicant pool served, policies, and costs.

## 7. Since I already pay taxes, why am I paying these fees?

Proposition 26 broadens the definition of “tax” as any levy, charge, or exaction of any kind imposed by the State and enumerates exceptions for fees that could not be considered a tax. The exceptions to the definition of “tax” include: 1) a charge imposed for a specific government service, product, benefit, or privilege provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs of providing the service or product to the payor; 2) a charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof; and 3) a charge imposed as a condition of property development

Taxes collected by Santa Clara County are best used to fund services of general public benefit. Most of the services under the Minor Encroachment Permit Fee Schedule are necessary to provide oversight of activities undertaken by private parties needing access to public roads for private benefit. It is generally accepted in California that when government agencies perform service for private benefit, a fee to recover those costs is appropriate to avoid use of general revenues that are more ideally spent on public benefit services. Minor Encroachment Permit Fees which are set lower than maximum cost recovery are acknowledging some public benefit received from the service.

## 8. What does “fair and equitable” mean?

The Minor Encroachment Permit Fee Schedule is governed by the California Constitution and California Government Code, both of which direct these types of fees to bear a fair and reasonable relationship to the payer’s burden on or benefits received from the activity. These mandates are intended to ensure the public is subject to fees which are fair and equitable. In the Fee Schedule, the categories and charges bases, as well as the dollar amounts, are designed to adhere to these governing requirements.

## 9. Do the fees I am paying comply with laws, statutes, rules or regulations?

Santa Clara County Code of Ordinances Section B17-31.1(a) states applicants for encroachment permits shall pay for the costs involved with the encroachment permit application.

The Minor Encroachment Permit Fee Schedule complies with the California Constitution and California Government Code. In compliance with the California Constitution, costs allocated to fee payers bear a fair or reasonable relationship to the payer’s burdens on, or benefits received from, the permitting activity. In compliance with California Government Code, fees do not exceed the estimated reasonable cost of providing the service for which the permit fee is charged. The County prepared a formal analysis to make these findings. Furthermore, certain other California laws govern specific permits in the Fee Schedule, which are set to the limits prescribed by those laws.

## 10. Why not just bill me for the time it takes to do the job?

A combination of fixed fees and fees based on actual time-and-materials are listed in the Minor Encroachment Fee Schedule. Time-and-materials fees are used only for major projects to best align fees with the highly variable nature of major permitting work, thus achieving necessary fairness to applicants of those permits. Fixed fees are used for minor permits for which services are reasonably uniform across applicants.

Fixed fees are desired because they allow applicants to more easily pre-determine fee amounts that will be owed, work well in the online fee payment environment appreciated by many applicants, and minimize the more extensive process of deposit collection and periodic billings required by time-and-materials fees.

### More Questions?

For more information on questions relating to the Encroachment Permit fee process, please contact our Permit office: Email ([permits@rda.sccgov.org](mailto:permits@rda.sccgov.org)) or call 408-573-2475.