



April 27, 2023

VIA ELECTRONIC MAIL

Mendocino County Board of Supervisors
501 Low Gap Road, Room 1010
Ukiah, CA 95482

Email: bos@mendocinocounty.org

Re: Ordinance No. 4507

Dear Board Members:

We write as attorneys for the First Amendment Coalition, American Civil Liberties Union of Northern California, The Mendocino Voice, Northern California Chapter of the Society of Professional Journalists, and Willits Environmental Center (collectively, "Organizations"). On behalf of the Organizations, we urge the Board of Supervisors to repeal Ordinance No. 4507 ("Ordinance") at the Board's next meeting on May 9, 2023.

The Organizations advocate for and depend on access to public records to fulfill their missions. In particular, The Mendocino Voice and Willits Environmental Center have long fought for transparency in Mendocino County. The Ordinance impairs this important work by imposing fees that can run into the thousands of dollars for locating, reviewing, or redacting records requested by members of the public.

At the Board's meeting on April 25, 2023, Supervisor Williams said that he and Supervisor Mulheren intended to bring a proposed action to the Board to repeal the Ordinance at "the soonest time available for scheduling." As Supervisor Williams and others on the Board were likely aware at the time, the Organizations were on the eve of filing a lawsuit to challenge the Ordinance. Thus, if the Board fails to calendar the motion to repeal the Ordinance for the May 9 meeting, or if it fails to pass such a motion, the Organizations will proceed with this litigation.

The California Supreme Court recently confirmed that the California Public Records Act ("CPRA") does not authorize fees for locating, reviewing, and redacting records, because such fees create unjustified financial barriers to transparency rights guaranteed by the CPRA and California Constitution. (*National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, 493-494, 507-508; see also Gov. Code, §§ 7922.530, 7922.575.) The County knows this is the law and has explicitly stated on the record that the CPRA "contains no mechanism for the recovery

of the cost of staff time spent searching for and providing public records.”¹ And yet, the Ordinance purports to authorize charging up to \$150 per hour for responding to record requests.

No law authorizes a county to impose the fees for locating, reviewing, or redacting public records specified in the Ordinance. Although in some circumstances a county may “increase or decrease” a fee “that is otherwise authorized to be levied by another provision of law” (Gov. Code, § 54985), the fees imposed by the Ordinance are not “otherwise authorized.”

In addition, nothing in section 54985 can “be construed as granting any additional authority to levy any fee or charge which is not otherwise authorized by another provision of law nor shall its provisions be construed as granting authority to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.” (Gov.. Code, § 54987(a).) Because the CPRA prohibits the kind of fees imposed by the Ordinance, section 54985 cannot be construed to authorize them.

Accordingly, if the Ordinance is not repealed on May 9, we are prepared to file suit on behalf of the Organizations challenging the Ordinance. Time is of the essence because every day that this Ordinance is still in effect, members of the public are subject to a financial barrier that deprives them of the transparency rights guaranteed by the CPRA and California Constitution.

To the extent the County has assessed fees under the Ordinance for any CPRA requests that remain outstanding, the County should withdraw any such assessment and process those requests immediately without charging any fees for locating, reviewing, or redacting the requested records. The failure to withdraw any such assessments would also expose the County to litigation challenging the validity of those assessments regardless of whether the Ordinance is repealed.

Thank you for your attention to this matter. Please let us know if you have any questions.

Sincerely,

s/David Loy

David Loy
First Amendment Coalition
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s/Chessie Thacher

Chessie Thacher
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cc: County Counsel (curtisc@mendocinocounty.org)

¹ See “PRA Memo with Attachments,” p. 2, dated October 5, 2022, directed to “County Department Heads and Elected Officials” from Tim Hallman; see *also* “PRA Fee Update,” dated February 2, 2023, directed to Mendocino County Board of Supervisors from Christian M. Curtis, County Counsel (recognizing same). Both of these documents were presented publicly at the Board of Supervisors Meeting on February 7, 2023. Available at: <https://mendocino.legistar.com/LegislationDetail.aspx?ID=6014546&GUID=1668B645-BE08-49DF-9024-788A9B3660BF>