

Date of Hearing: April 3, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1484 (Grayson) – As Amended March 26, 2019

SUBJECT: Mitigation Fee Act: housing developments

SUMMARY: Requires local agencies to publish fees for housing development projects on their internet website and freezes “impact and development fees that are applicable to housing developments” for two-years after a development application is deemed complete. Specifically, **this bill:**

- 1) Defines “housing development project” to mean a use consisting of any of the following:
 - a) Residential units only;
 - b) Mixed-use development consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use; and,
 - c) Transitional housing or supportive housing.
- 2) Defines “impact and development fees that are applicable to housing developments” to mean any of the following:
 - a) Any fee imposed under the Mitigation Fee Act;
 - b) Any fee based on the impact of a project;
 - c) Parkland dedication fees imposed under the Quimby Act;
 - d) Affordable housing fees; and
 - e) Utility connection fees and capacity charges that are established by the city or county.
- 3) Requires a local agency to provide a list of all fees imposed on a “housing development project” on the local agency’s website.
- 4) Prohibits a local agency from imposing, extending, or increasing any fee upon a housing development project after an application is submitted unless the local agency specifically identifies the type and amount of the fee, including any fee scale, on the local agency’s internet website at the time the application for the project is submitted to the local agency.
- 5) Requires a city or county to provide an applicant a good faith statement disclosing the amount of impact and development fees applicable to a housing development at the time that the application for a housing development is deemed complete.
- 6) Prohibits a public agency from increasing any impact and development fees to a housing development for two years after the city or county issued the good faith statement.
- 7) Provides that the prohibition on fee increases shall not apply to the following:

- a) A fee charged for a water or sewer connection;
 - b) Fees within the a community benefit agreement;
 - c) Fees charged by both water and utility entities, both public and private; and
 - d) Any fee increase resulting from an automatic annual adjustment based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee in effect at the time the housing development application is deemed complete.
- 8) Provides that the fact that a housing development project may require a land use approval that is considered legislative does not limit or narrow the applicability or scope of the prohibition against fee increases.
- 9) Provides that the prohibition on fee increases, does not prohibit additional fees, charges, or other exactions if the project is changed to include additional units or square footage that result from project revisions after the application is determined to be complete.
- 10) Provides that the prohibition on fee increases, does not limit a city, county, or city and county authority to impose a fee or other exaction necessary to mitigate a housing development project's impact to a less than significant level pursuant to the California Environmental Quality Act (CEQA)
- 11) Provides that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

EXISTING LAW:

- 1) Requires the Department of Housing and Community Development (HCD), by June 30, 2019, to complete a study to evaluate the reasonableness of local fees charged to new developments and make recommendations of potential amendments to the Mitigation Fee Act to substantially reduce fees for residential development.
- 2) Defines housing development to mean:
- a) Residential units only
 - b) Mixed use developments consisting of residential and non-residential with at least two-thirds of the use dedicated to residential
 - c) Transitional and supportive housing
- 3) Establishes the Permit Streamlining Act and requires the following:
- a) No later than 30 days after any public agency receives an application for a development project, the agency must determine in writing whether the application is complete and provide that determination to the applicant of the development project;

- b) If the written determination is not made within 30 days then the application is deemed complete;
 - c) If the application is determined not to be complete, the public agency must provide an explanation of the specific information needed to complete the application; and
 - d) The public agency to provide an appeals process for a developer to challenge a determination that an application for a development project is incomplete.
- 4) Authorizes a local government to enter into a development agreement with a party that has a legal or equitable interest in a property.
 - 5) Requires a development agreement to specify the duration of the agreement, the permitted uses of the property, the density of intensity or the use, the maximum height and size of the proposed buildings, and any dedication of land for a public purpose. The agreement may provide construction shall begin within a specified time and that the project or any phase must be completed within a specified time.
 - 6) Allows the development agreement to include conditions, terms, restrictions, and requirements for subsequent discretionary actions provided they do not prevent the development of a project at the density and intensity in the agreement.
 - 7) Allows a development agreement to be amended or cancelled, in whole or in part, by mutual consent of the developer and the local government.
 - 8) Establishes the Mitigation Fee Act and requires a local agency to do all of the following when establishing, increasing, or imposing a fee on a development project:
 - a) Identify the purpose of the fee;
 - b) Identify the use to which the fee is to be put;
 - c) Determine how there is a reasonable relationship between the fees use and the type of development project on which the fee is imposed; and
 - d) Determine how there is a reasonable relationship between the need for a public facility and the type of development project on which the fee is imposed.

FISCAL EFFECT: Unknown.

COMMENTS:

Background: Local governments can charge housing developments a variety of fees. Cities charge service fees to pay for staff time for processing a development application, reviewing plans, permit approvals, and inspections. Impact fees are imposed to pay for the cost of the infrastructure needed to support the development. The Mitigation Fee Act, passed in 1989, requires cities to identify the purpose of a fee, the use of the fee and that there is a "reasonable" relationship between the fee amount and the impact of the project. Local agencies also charge fees to fund open space and parks, school fees, water and sewer fees, and project specific fees through negotiated development agreements. The passage of Proposition 13 and the loss of property tax revenues have fueled cities' dependence on fees to fund infrastructure and services.

At the beginning of the development process a developer submits a development application. The Permit Streamlining Act requires a planning department to determine if an application is complete within 30 days. If the planning department determines that the application is incomplete it must provide in writing why it is incomplete. When the developer resubmits the application the 30 day timeline starts again.

Local governments and developers can enter into development agreements to negotiate the conditions of development. Development agreements and vesting maps provide greater certainty to developers throughout the process, because once those terms are negotiated they cannot be altered unless by mutual consent. Under the existing process fees can be locked in when a developer enters into a development agreement or secures a vesting map. Those are subject to negotiation between the developer and the city and all of the details of the development are part of the agreement.

Some jurisdictions publish development fee schedules that developers can use to estimate the cost of development. Some city planners will provide estimates of the fees associated with a development at the application process. Not all cities publish fee schedules or provide estimates which make it difficult for developers to estimate the cost of the project. The development process can take several years, and the final cost of the development is not known until the permit stage.

This bill requires local agencies to publish fees on their website. Once the application for a development is deemed complete, impact and development fees are locked in for two years. Fees include those fees covered by the Mitigation Fee Act, fees for parklands, sewer and water connection fees imposed by the city and county, fees to address impacts of a development and affordable housing fees.

University of California Impact Fee Report: In March 2018, the Turner Center for Housing and Innovation at UC Berkeley, published a study *It All Adds Up: the Cost of Housing Development Fees in Seven California Cities*, that looked at the development fees charged in seven different cities (Berkeley, Oakland, Fremont, Los Angeles, Irvine, Sacramento, and Roseville) to determine the total amount of fees charged in each city, the makeup of the fees, and the extent to which information on the development fees is available to builders. The results showed a wide range in the amount of fees charged for multifamily housing from \$12,000 per unit in Los Angeles to \$75,000 per unit in Fremont. In addition, the report found several issues with the way that development fees are implemented including difficulty in estimating fees, lack of oversight or coordination between city departments in setting fees, variability in type and size of impact fees across cities, the way in which individual fees add up and substantially increase the cost of building housing, and the fact that projects are often subject to additional exactions not codified in any fee schedule. The report made several recommendations to improve state and local development fee policies including: 1) adopt objective standards for determining the amount of fees that can be charged, 2) adopt a fee transparency policy and implement best practices for setting and charging fees, 3) define when fees can be levied and changed during the development process, and 4) identify alternative ways to pay for the cost of growth to reduce cities' reliance on fees.

Further study: As the Berkeley study points out; there is a need for greater transparency in the development process. Despite the requirement that fees be reasonable under the Mitigation Fee Act, there is a wide discrepancy between the amounts of fees charged by local jurisdictions for

development. AB 879 (Grayson) Chapter 374, Statutes of 2017 required HCD to complete a study to evaluate the reasonableness of local fees charged to new developments and make recommendations for potential amendments to the Mitigation Fee Act to substantially reduce fees for residential development. The study must be completed by June 30, 2019.

Support if amended: The American Planning Association, which has a support if amended position on the bill, writes, “APA believes that the process now in the bill with the addition of several key qualifying amendments, are feasible, consistent with best local practices regarding the imposition of fees on housing units at the time the development application is determined to be complete and apply to specific fees that are known to the city or county at that early stage in the development process.” APA requests that the hold on fees only apply to the housing units in the development project and the application must include a detailed square footage breakdown to make clear that the freeze on fees only applies to housing and not commercial portions of a development. In addition, APA requests that the bill be amended to state that in addition to any changes in the units or square footage, other project changes proposed by the applicant after the application is deemed complete, can result in changes to the fees in effect at the time the development is deemed complete.

Staff comments: This bill includes several inconsistencies.

- The requirement to freeze impact and development fees for two years applies when a city or county deems an application for a housing development is complete; however, the requirement to disclose fees on a website and that only fees listed on a website can be imposed on a development applies more broadly to local agencies which includes special districts and school districts. The bill should be amended to use “city and county” throughout.
- The bill defines the fees that must be frozen at the time of the application stage as “impact and development fees charged to a housing development” but this term is not used to define the fees that a local agency publishes on their website. To ensure consistency, the bill should be amended to require local agencies to list “impact and development fees charged to a housing development” on their website.
- The bill also prohibits a local agency from imposing fees that are not listed on the website at the time an application is submitted. This should be changed to the time an application is deemed complete. There may be considerable time between when an application is submitted and deemed complete.

Committee amendments:

- Require local agencies to disclose “impact and development fees applicable to housing developments” consistent with the definition of “impact and development fees applicable to housing developments” in 65944.5 (f) on their website.
- Prohibit local agencies from imposing fees not listed on their internet website at the time the housing development is application is deemed complete versus when it is submitted.

- To make the bill consistent require cities and counties to disclose impact and development fees applicable to housing developments on their website rather than local agencies.

Double referred: This bill was also referred to the Assembly Committee on Local Government where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors (co-sponsor)
 California Building Industry Association (co-sponsor)
 California Housing Consortium (co-sponsor)
 California Apartment Association
 Bay Area Council
 Building Industry Association of the Bay Area
 California Community Builders
 California YIMBY
 EAH Housing
 Facebook
 Habitat for Humanity East Bay/Silicon Valley
 Non-Profit Housing Association of Northern California
 North Bay Leadership Council
 Related California
 SV@Home
 SPUR
 TMG Partners

Support If Amended

PICO California
 The San Francisco Foundation
 Working Partnerships USA

Opposition

None on file

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