



first, with specified exceptions.

- 5) Exempts a local government from the above prohibition if it determines that the fees or charges will be: collected for public improvements or facilities for which an account has been established and funds appropriated, and for which the local government has adopted a proposed construction schedule or plan; or the fees or charges are to reimburse the local government for expenditures previously made. This exception does not apply to units reserved for occupancy by lower income households included in a residential development proposed by a nonprofit housing developer in which at least 49% of the total units are reserved for occupancy by lower income households, as defined. A city or county may require a performance bond or letter of credit to guarantee the payment of the nonprofit housing developer's fees.
- 6) If any fee or charge in 1) is not fully paid prior to the issuance of a building permit, the local agency issuing the building permit may require, as a condition of issuing a building permit, a contract to pay the fee or charge, or applicable portion, within the time specified in 1). If the fee or charge is prorated, the obligation under the contract shall be similarly prorated.

**This bill:**

- 1) Limits the circumstances under which a local agency can collect fees or charges on residential developments at the time the local agency issues a building permit. Specifically the bill:
  - a) Removes the ability for local agencies to collect fees earlier than final inspection or certificate of occupancy if it has adopted a construction schedule or to reimburse the local agency for expenditures previously made.
  - b) Only allows local agencies to require the payment of fees or charges at the time the local agency issues a permit:
    - i) To reimburse planning fees or charges for expense already incurred with the review of the project.
    - ii) To cover construction of public improvements that have commenced or will commence within 24 months of permit issuance, if the local agency provides supporting documentation, as specified. Provides that if construction does not commence within 24 months then a local agency must return the money until the final inspection or certificate of occupancy is issued, whichever occurs first.

- 2) Limits the authority of local agencies to collect utility service fees at the time the local agency receives an application to fees related to capacity charge connections.
- 3) Prohibits local agencies from charging interest on fees and charges the local agency collects at the time of final inspection or certificate of occupancy instead of at the time of the issuance of the building permit as a result of this bill.
- 4) Gives local agency the ability to require the payment of a bond or interest-bearing instrument when it issues a building permit if the local agency can provide evidence of the costs associated with the bond when it requires the payment.

**COMMENTS:**

- 1) *Author's Statement.* "California is facing a serious housing affordability crisis that is exacerbated by extremely high impact fees that increase the cost of housing for nearly every California resident. While these fees may be necessary for local jurisdictions, requiring developers to pay the fees before a home is even built increases financing costs and decreases the availability of capital to complete projects. Assembly Bill 2729 does not impact the ability of local jurisdictions to collect the fees. Rather, it simply requires payment of impact fees when the home is actually going to be occupied. This small change reduces the financial burden, improves cash-flow, and increases the likeliness that projects will be completed."
- 2) *Impact fees.* Local governments can charge a variety of fees to a development. These fees, commonly known as impact fees or mitigation fees, go toward infrastructure development (such as adding lanes to roads or supporting additional traffic) or other public benefits (such as new parks, schools, or affordable housing). In the wake of Proposition 13 in 1978 and the resulting loss of significant property tax revenue, local governments have also turned to development fees as a means to generate revenue. Given that California cities have tightly restricted funding sources, fees are one of the few ways cities can pay for the indirect costs of growth. The Mitigation Fee Act requires local officials, when establishing, increasing, or imposing a fee as a condition of approving a development project, to identify the purpose of the fee; identify the use of the fee, including the public facilities that the fee will finance; determine a reasonable relationship between the use of the fee and the development; and determine a reasonable relationship between the public facility's need and the

development. Local agencies must also produce an annual report on developer and other fees.

- 3) *Impact Fee Collection.* Cities and counties are technically prohibited from collecting impact fees before they conduct the final inspection or issue a certificate of occupancy, whichever occurs first. However, current law provides that if a local agency has adopted a capital improvement plan or a proposed construction schedule it may collect impact fees earlier in the approval process (e.g., at the time of issuing a building permit). Approximately 94% of Californians reside in a jurisdiction that is required to regularly adopt a capital improvement plan as a part of a nexus study it prepares to justify its impact fees. In practice while local agencies are technically required to collect impact fees at the end of the approval process, most, if not all, jurisdictions qualify for an exemption that allows them to collect impact fees earlier in the approval process.

If the developer has not fully paid the impact fees before the local agency has issued a building permit for construction of any portion of the residential development, the local agency can require the developer, as a condition of receiving the building permit, to enter into a contract to pay the fees, secured by a lien on the property. Additionally, the local agency can require the developer to provide notification of the opening of any escrow for the sale of the property, and disclose in the escrow instructions that the fees must be paid before disbursing proceeds to the seller. The local agency can defer collection of one or more fees up to the close of escrow.

- 4) *Impact fees and housing construction costs.* Concerned that mitigation fees could be increasing the cost of housing, the Legislature passed AB 879 (Grayson, Chapter 374, Statutes of 2017), which required HCD to complete a study to evaluate the reasonableness of local fees charged to new developments. In August 2019, HCD released the study, performed by UC Berkeley's Turner Center for Housing Innovation (Turner Center).<sup>1</sup> Among other conclusions, the report argued that fees can be a barrier to development and can raise prices of both new and existing homes; however, it also noted that local governments face substantial fiscal constraints and thus have turned to fees as a source of revenue to fund public services for new developments. The Turner Center Report found that "development fees for multifamily housing range from a low of \$12,000 per unit in Los Angeles to \$75,000 per unit in Fremont. Fees for single family housing range from \$21,000 per home in Sacramento to \$157,000

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<sup>1</sup> Hayley Raetz, David Garcia, and Nathaniel Decker. *Residential Impact Fees in California* (Turner Center for Housing Innovation, UC Berkeley, August 2019). [https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/Residential\\_Impact\\_Fees\\_in\\_California\\_August\\_2019.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/Residential_Impact_Fees_in_California_August_2019.pdf)

per home in Fremont, over five times as much.” The study also found that “fees can amount to anywhere from 6 percent to 18 percent of the median home price depending on location.” While impact fees are critical to funding essential government services, they also represent a significant portion of overall development costs that must be paid. Requiring this payment before a project even breaks ground can present significant risks to housing developers.

- 5) *Housing entitlements.* In general, constructing a housing development project requires local government approval at multiple stages; this approval process is often referred to as the entitlement process. An approval is generally considered an entitlement when it locks in the regulatory standards that a local government or state agency can apply to a project. Entitlements are powerful documents as they provide certainty to developers, which can help them secure financing for a project. However, entitlements also constrain the ability of local governments and state agencies to adjust for new conditions. Additionally, when an issued entitlement is outstanding, it alters the ability of the local government or state agency to approve other projects that could potentially be impacted by the pending project. Therefore, various entitlements are subject to expiration, although many may be extended at the discretion of the local government or state agency.

According to a study conducted by Berkeley Law School and others, *Getting It Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process*, in which local government land use and review processes across selected cities in the Bay Area and Southern California were examined, “the processes by which local governments review residential development projects under their zoning ordinances and under CEQA varies from city to city. As a result, developers seeking to construct residential projects often must learn to navigate very different and complicated land use systems, even if they work in the same region.” In addition, developers of affordable housing projects must navigate a web of overlapping eligibility criteria and application deadlines for various state and local housing programs, which often results in project delays as developers work to line up various funding sources. An economic recession, such as current economic difficulty related to the COVID-19 pandemic, can result in even further delays.

Thus, the Legislature has occasionally sought to assist developers by extending certain entitlements. For example, AB 1561 (C. Garcia, Grayson, Chapter 195, 2020) included a provision for an 18-month extension for planning level and pre-building permit entitlements that were issued prior to the COVID State of Emergency declared by the Governor on March 4, 2020 and were set to expire prior to December 31, 2021.

This Committee approved SB 937 (Weiner) in April, that bill placed similar restrictions on the ability of local agencies to collect impact fees and statutorily extended entitlements for specified housing development projects. **In Local Government Committee the author accepted amendments to extend housing entitlements in this bill, which due to time constraints, must be taken in this committee.**

- 6) *Amendments.* Due to compressed committee referral deadlines, the author was unable incorporate amendments agreed to in Local Government Committee before the bill could be heard in this Committee. Those amendments must be adopted in this Committee. **The author has agreed to accept the following amendments:**

*Entitlements*

- a) **Extends housing entitlements that were issued before January 1, 2024 and that will expire prior to December 31, 2025 by 18 months.**

*Impact Fees*

- b) **Limit the fee deferrals to the following types of housing development projects:**
- i) **Projects with affordable housing components.**
  - ii) **Projects subject to streamlined ministerial approval**
  - iii) **Projects that include 10 or fewer units**
- c) **Provide that the fee deferrals do not apply to fees and charges levied by the governing board of a school district.**
- d) **Provide that local agencies can still require advanced payment of impact fees: (1) to reimburse any expenditures made, not just planning fees and charges, (2) if the fees are pledged to debt service, and (3) to reimburse another developer under a reimbursement agreement.**
- e) **Do not require local agencies to repay fees if they have entered into a design or construction contract for the construction of the public improvements or if the fees are pledged to debt service.**
- f) **Instead of requiring local agencies to provide “supporting documentation” regarding when they will begin construction on the financed improvements, require them to provide “documentation.”**
- g) **Instead of requiring local agencies to provide evidence of the costs of the performance bond, require them to provide “documentation.”**

- 7) *Opposition.* Several local agency associations are opposed to this bill. They are concerned that this bill shifts risks from the private sector to local agencies that are ill-suited to absorb this risk and they express concerns that the bill will lock in impact fees far before the completion of a project, and prohibit local agencies from charging interest rates on fees that are deferred. They note that development impact fees fund infrastructure needed to provide essential services and that this bill risks delaying or denying vital community improvements.
- 8) *Incoming!* This bill was heard in the Local Government Committee where it was approved on June 26, 2024 on a 7-0 vote.

**RELATED LEGISLATION:**

**SB 937 (Wiener, 2024)** — makes various changes to the process for local agencies to collect development impact fees, and extends development entitlements. *This bill is pending in the Assembly Appropriations Committee.*

**SB 1210 (Skinner, 2024)** — requires electrical, gas, sewer, and water service utilities to post fee schedules and estimated timeframes for new service connections and capacity upgrades needed to connect new housing construction projects. *This bill is pending in the Assembly Appropriations Committee.*

**AB 1820 (Schiavo, 2024)** — requires a city or county to provide an estimate of fees and exactions for the project within 30 days of receiving a preliminary application for a housing development project upon a request from the project applicant for an estimate. *This bill is being heard in this same hearing.*

**AB 2553 (Friedman, 2024)** — redefines “major transit stop” for purposes of exempting housing developments within ½ mile of a major transit stop from specified impact fees. *This bill is being heard in this same hearing.*

**AB 2663 (Grayson, 2024)** — requires local agencies to post certain information regarding affordable housing impact fees on their websites. *This bill is pending on the Assembly Floor.*

**AB 3012 (Grayson, 2024)** — requires cities and counties to create a fee estimate tool that the public can use to calculate an estimate of fees and exactions for a proposed housing development project available on its internet website. *This bill is being heard in this same hearing.*

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: No    Local: No

**POSITIONS: (Communicated to the committee before noon on Wednesday, June 26, 2024.)**

**SUPPORT:**

Bay Area Council  
California Building Industry Association (CBIA)  
California Chamber of Commerce  
California Community Builders  
California Housing Consortium  
California YIMBY  
Circulate San Diego  
Fieldstead and Company  
Habitat for Humanity California  
Housing Action Coalition  
Monterey Bay Economic Partnership  
SPUR  
YIMBY Action

**OPPOSITION:**

California Association of Recreation & Park Districts  
California Fire Chief's Association  
California Special Districts Association  
California State Association of Counties  
City of Carlsbad  
City of Thousand Oaks  
Fire District Association of California  
Kern County Superintendent of Schools Office  
League of California Cities  
Livable California  
Los Angeles Unified School District  
Mesa Water District  
Mission Street Neighbors

**-- END --**