

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 3147 (Caballero) – As Introduced February 16, 2018

**SUBJECT:** Fee mitigation act: housing developments

**SUMMARY:** Prohibits a local agency from imposing a fee, charge, or other exaction that is more than the fee, charge, dedication, reservation, or other exaction in effect at the time the housing development application is determined to be complete pursuant to the Permit Streamlining Act. Specifically, **this bill:**

- 1) Makes legislative findings and declarations including:
  - a) Providing certainty in the housing approval and development process is essential for achieving the state's housing policies;
  - b) Although the Legislature has attempted to provide certainty to the development process, applicants for housing projects continue to be subjected to demands by local agencies to comply with new or increased requirements after an application is determined to be complete; and
  - c) It is the intent of the Legislature to provide effective and meaningful certainty for applicants for housing projects by prohibiting them from being subjected to new or increased requirements not in effect when an application is complete and that it is the policy of the state that this section shall be interpreted broadly and implemented broadly to effectuate that intent.
- 2) Provides that a housing development project shall not be subject to a fee, charge, dedication, reservation, or other exaction, including a fee for water or sewer connection, charged by a local agency, that is more than the fee, charge, dedication, reservation, or other exaction in effect at the time that the application for a housing development project is determined to be complete.
- 3) Provides that the fact that a housing development project may require a land use approval that is considered legislative in nature shall not be construed to limit or narrow the applicability or scope of the protections provided in 2).
- 4) Provides that the state is not required to reimburse local agencies because they have the authority to levy service charges, fees, or assessments sufficient to pay for the program or service mandated by this act.

**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 project" to mean any of the following:

- a) Residential units only;
  - b) Mixed-income developments consisting of residential and non-residential uses with at least two-thirds of the square footage designated for residential use; or
  - c) Transitional or 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 a variety of fees to a development. 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.

This bill would "freeze" the fees that a city or county or a utility can charge a developer at the application stage. 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.

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.

Purpose of this bill: According to the author, "California is in the depths of a housing crisis – both in terms of supply and affordability. There is much to do to expedite the process of building homes and to make it less expensive to build. One of the largest barriers to home construction is the imposition of excessive exactions and impact fees, that were not required by the city or county in initial communications and that add significantly to the overall cost of the proposed housing units. Existing law is inadequate to address these problems. Common law vested rights are not secured until very late in the development process – after building permit issuance and substantial reliance on the permit. The existing statutes previously enacted by the Legislature to provide greater transparency and certainty than common law vesting -- Vesting Tentative Maps (VTMs) and Development Agreements (DAs) -- are inadequate because:

- They do not limit new or increased fees and charges being imposed by other local agencies (school fees, sewer fees, water fees). These fees are often some of the largest imposed on new housing.
- Local governments often impose additional procedural and substantive requirements on projects that seek a VTM.
- Local governments often demand payment of fees in excess of those allowed under the Mitigation Fee Act as the price for agreeing to enter into a DA.
- Local governments often impose conditions--even on projects with VTMs or DAs-- that require projects to pay whatever fee or exaction is in effect when a building permit is sought--often these are far in excess of what was in effect when the project application was deemed complete.

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. This bill does not address that issue, but rather would freeze relying upon the existing requirement that the fee being reasonable. Last year, as part of a package of housing bills passed by the Legislature, AB 879 (Grayson) Chapter 879, 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. The committee may wish to consider if this bill responds to the underlying issue or if further information is needed to develop a comprehensive response.

Arguments in support: According to supporters, "AB 3147 will help spur housing production by making the fee process more transparent and possibly reducing extraneous fees assessed on a housing project. This would provide home builders certainty, at least with regards to the fees assessed on a project. In turn it will potentially reduce costs by prohibiting local governments from taking on additional fees, charges, etc. late in the process as a condition of approval. The

doubt and lack of transparency further escalates home prices. A recent study by the UC Berkeley Turner Center for Housing and Innovation identifies the lack of transparency and the imposition of fees late in the approval process as having serious consequences for housing development. "

Arguments in opposition: According to opponents, "the existing statute governing the 'freezing' of development fees and conditions place clear time limits upon the duration of the 'freeze' – carefully defining both the beginning of that period (complete application for a vesting tentative map) and the end (generally one to five years after the recordation of the final map, depending on the nature of the project). As the Legislature, has progressively lengthened the life of tentative maps (and the duration of the 'freeze'), it has taken deliberate steps to "mitigate some of the impacts of repeated subdivision and parcel map extensions on cities and counties" by allowing local governments to levy or impose a condition that requires the payment of a fee upon the issuance of a building permit for map that have been extended".

Policy considerations: Although there appears to be a lack of transparency in the development process regarding fees and an over reliance on the part of local governments on fees to pay for infrastructure and public projects, it's unclear if this bill adequately addresses the underlying issue. The bill does not deal with the process for determining the fees under the Mitigation Fee Act or local governments overreliance upon fees as a result of their inability to capture more property tax under Proposition 13.

Although the bill rightly attempts to create more certainty in the development process, it requires fees to be frozen too early in the development process. At the application stage, the project has not completed design review, CEQA, and other planning milestones to provide enough detail to set fees. The committee may wish to consider whether fees should rather be locked in when a project is entitled.

The bill also proposes to freeze fees charged by utilities which is problematic because the city does not control fees charged by utilities for infrastructure and connection charges. The fees that are knowable are impact and development fees under the Mitigation Fee Act, fees imposed under the Quimby Act, and affordable housing fees. Public benefit agreements come later in the development process and would not be captured in the previous list of fees.

The bill also does not place a limit on how long fees would be frozen after the applications is deemed completed. A developer could receive approval for an application and then not develop the project for several years, but under this proposal, a city would be unable to revisit the fees based on changes in infrastructure needs or other cost drivers.

Committee amendments: Due to timing constraints, the following amendments cannot be taken in committee. If the committee supports them they must be taken in the next committee.

The committee may wish to consider the following amendments:

- Require each city, county, and city and county to publish, on their website, a schedule of impact and development fees applicable to housing developments. This information should include the fee rate, the method of calculation, factors that could adjust the fee up or down, and at what stage in the development process the fee is charged.
- Define "impact and development fees" as those fees that are established by the local government separate from its action on a specific application" and are limited to fees

imposed under the Mitigation Fee Act, other fees based on the impact of a project, parkland dedication fees imposed under the Quimby Act, and affordable housing fees.

- Freeze impact and development fees (this does not include community benefit agreements) at the point that a project is entitled instead of when the application is approved. Require the fees to be frozen for up to two years.

*Double-Referred:* If AB 3147 passes out of this committee, the bill will be referred to the Committee on Local Government.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Building Industry Association (sponsor)  
Bay Area Council  
California Apartment Association  
California Association of REALTORS  
California Building Industry Association  
California Business Properties Association  
California Chamber of Commerce  
California Council for Affordable Housing  
California Housing Consortium  
California YIMBY  
National Federation of Independent Business

**Opposition**

American Planning Association, California Chapter  
California Special Districts Association  
California State Association of Counties  
League of California Cities  
Rural County Representatives of California  
Urban Counties of California

**Analysis Prepared by:** Lisa Engel / H. & C.D. / (916) 319-2085