SENATE THIRD READING
SB 499 (Stern)
As Amended July 07, 2025
Majority vote

SUMMARY

Authorizes local agencies to collect impact fees before issuance of the certificate of occupancy if the fees are for parkland or recreational facilities that serve an emergency purpose.

Major Provisions

1) Authorizes local agencies to require payment of impact fees or charges prior to the date the first certificate of occupancy or first temporary certificate of occupancy is issued for a designated residential development project provided the local agency does both of the following:

   a) Determines that the fees or charges will be collected for parkland or recreational facilities that are identified for an emergency purpose beyond general recreational or aesthetic use; and,

   b) Identifies the parkland or recreational facility in the safety element or local hazard mitigation plan.

COMMENTS

1) *The Mitigation Fee Act.* When approving development projects, cities and counties can require the applicants to mitigate the project's effects by paying fees – known as impact fees, mitigation fees, or developer fees. Impact fees stem from a straightforward principle: new developments should pay for the impacts that they have on the community and the burden they impose on public services. Prior to establishing, increasing, or imposing a fee as a condition of approving a development project, the Mitigation Fee Act requires local officials to:

   a) Identify the fee's purpose;

   b) Identify the fee's use, including the public facilities to be financed;

   c) Determine a reasonable relationship between the fee's use and the development;

   d) Determine a reasonable relationship between the public facility's need and the development; and,

   e) Determine a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

   The developer is typically required to pay multiple impact fees, each corresponding to different public services or infrastructure needs that the development will affect, such as roadways, schools, water and sewer infrastructure, public facilities, affordable housing, and parks.

2) *"Essential Nexus" and "Rough Proportionality."* The U.S. Supreme Court and the California Supreme Court issued a series of decisions in the 1980s and 1990s that affected the scope and application of impact fees. In its 1987 *Nollan* decision, the U.S. Supreme Court said there must be an "essential nexus" between a project's impacts and the conditions for approval. In the 1994 *Dolan* decision, the U.S. Supreme Court opined that conditions placed on development must have a "rough proportionality" to a project's impacts.

   In the 1996 *Ehrlich* decision, the California Supreme Court distinguished between "legislatively enacted" conditions that apply to all projects and "ad hoc" conditions imposed on a project-by-project basis. *Ehrlich* applied the "essential nexus" test from *Nollan* and the "rough proportionality" test from *Dolan* to "ad hoc" conditions. The Court did not apply the *Nollan* and *Dolan* tests to the conditions that were "legislatively enacted." In other words, local officials face greater scrutiny when they impose conditions on a project-by-project basis.

   As a result of these decisions and the Mitigation Fee Act, local agencies must conduct a nexus study to ensure that any proposed impact fees meet these legal tests. Other requirements in the Mitigation Fee Act ensure that impact fees are appropriately levied and spent, including that a local agency must:

   a) Hold at least one open and public meeting prior to levying a new fee or increasing an existing one;

   b) Deposit and spend the fees within five years of collecting them; and,

   c) Refund fees or make specific findings on when and how the fees will be spent for construction, if the fees are not spent within five years of collection.

3) *Impact Fee Uses.* Different jurisdictions charge and use impact fees differently. The Department of Housing and Community Development's 2019 report on Residential Impact Fees in California: Current Practices and Policy Considerations to Improve Implementation of Fees Governed by the Mitigation Fee Act describes: "Our case studies display a variance in fee revenue indicative of the breadth of ways in which localities rely on impact fees to fund public services… Fremont collected the highest amount of free revenue among the case studies… primarily driven by its prioritization of a high level of service for parkland and facilities… Roseville depends on impact fees to fund development-related infrastructure like transportation and utilities… Riverside County rel[ies] on revenue to fund a variety of services, including parks, transportation, fire, and library improvements… Oakland prioritizes affordable housing fees… Los Angeles also recently implemented affordable housing fees… parks are a priority for Los Angeles, and the city asks development to support new parks within a certain radius of the project in order to maintain existing levels of service."

4) *Impact Fee Collection.* Generally, cities and counties cannot collect impact fees before they conduct the final inspection or issue a certificate of occupancy, whichever occurs first. A certificate of occupancy is issued by the local code enforcement agency to indicate compliance with all applicable state and local building code and health and safety code requirements; it is generally issued after the final inspection, though a temporary certificate of occupancy may be issued before the final inspection. For residential developments with

more than one dwelling, the local agency can determine whether developers pay fees on a pro rata or on a lump sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

A local agency can require payment earlier than described above if it has adopted a proposed construction schedule or to reimburse the local agency for expenditures already made, so long as the project does not come from a nonprofit developer that reserves at least 49 percent of its units for lower income households. Cities and counties can require performance bonds or letters of credits to guarantee these specific payments.

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 require the escrow instructions to include a disclosure 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.

5) *SB 937 of 2024.* SB 937 (Wiener), Chapter 290, Statutes of 2024, created new types of residential development projects called "designated residential development projects," which have different impact fee collection requirements. Designated residential development projects include any residential development that meets any of the following conditions:

   a) Contain 10 units or less with the exception of manager's units;

   b) 100% of the units are affordable;

   c) Meet requirements under recent housing streamlining legislation, including affordability; or,

   d) Use Density Bonus Law, which grants projects that provide specified percentages of affordable units relief from some local development standards.

   For these projects, local agencies generally cannot collect fees earlier than final inspection or certificate of occupancy, unless it is to reimburse expenditures previously made. They can only collect earlier if the local agency has not received payment or reimbursement by another party, or if the revenue supports:

   a) Public improvements related to providing water, sewer, wastewater, fire, public safety, or emergency services to the residential development;

   b) Roads, sidewalks, or other public improvements or facilities for the transportation of people that serve the development, including the acquisition of all property, easements, and rights-of-way that may be required to carry out the improvements or facilities; or

   c) Construction and rehabilitation of school facilities, if a school district has a five-year plan.

6) *Safety Element.* Every city and county must adopt a general plan with seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. The safety element establishes policies and programs to protect the community from risks associated with seismic, geologic, flood, and wildfire hazards, as well as from other concerns such as drought. The safety element also addresses evacuation routes, military installations, peak load water supply requirements, and minimum road widths and clearances around structures. Existing law requires the safety element to be updated upon revision of the housing element, which occurs every five or eight years, in accordance with the schedule set by the Department of Housing and Community Development for that jurisdiction.

7) *Local Hazard Mitigation Plan.* The Federal Emergency Management Agency (FEMA) defines hazard mitigation as any action taken to reduce or eliminate the long-term risk to human life and property from natural hazards. Local hazard mitigation plans (LHMPs) allow state, tribal, and local governments to develop long-term strategies for protecting people and property from natural disaster risks and vulnerability that are common in their area. These plans help guide land use, emergency preparedness, and infrastructure investments. LHMPs are required for jurisdictions to be eligible for certain types of federal disaster funding from FEMA. LHMPs must be reviewed and updated every five years and formally adopted by each participating jurisdiction's governing body before receiving approval from FEMA. According to the California Governor's Office of Emergency Services website, 45 out of 58 counties have approved LHMPs, while 13 counties have expired LHMPs.

According to the Author
According to the author, "In its rebuilding and future development, California must carefully plan with urban fire mitigation and public safety top of mind. SB 499 clarifies that parkland and recreational facilities are exempt from certain fee deferrals when identified as a mitigation strategy in a local agency's hazard mitigation plan.

"Parks and recreation centers are essential utilities for emergency management and response, serving as heating and cooling centers, gathering locations for coordinated evacuations, and staging areas for other types of natural disasters such as flooding and wind events. Most importantly, parklands serve as fuel breaks, which is a critical tool in community hardening and fire resiliency. The recent Palisades and Eaton Fires devastated densely populated regions, with over 37,000 acres and 16,000 structures destroyed by these fires alone. As California continues to develop and rebuild stronger, emergency-response readiness and holistic community protection must be uplifted.

"By clarifying this exemption from certain fee deferrals, SB 499 affirms the essential role of parks in providing safety and support during crises and facilitates local strategic planning and mitigation efforts that utilize all available resources to protect residents effectively."

Arguments in Support
The California Association of Recreation and Park Districts, sponsor of this bill, states, "As California faces increasingly severe wildfires and other climate-driven disasters, it is vital that we empower communities with every available tool for mitigation and emergency response. Parks and recreational areas are more than community amenities—they are integral components of our public safety infrastructure. These spaces serve as fuel breaks, emergency gathering sites, evacuation staging areas, and heating or cooling centers during climate emergencies.

"Recent events such as the Palisades and Eaton Fires have underscored the need for comprehensive, cross-sector planning. In 2018, for example, the Conejo Recreation and Park District's North Ranch Neighborhood Park played a crucial role as a fuel buffer during the Woolsey Fire, helping protect nearby homes from devastation. SB 499 acknowledges and codifies the essential role that parks and recreational facilities play in emergency preparedness and wildfire resiliency.

"By clarifying that these facilities are eligible for fee deferral exemptions under existing development statutes, SB 499 will remove ambiguity and support more effective local planning and resource allocation. It complements the intent of SB 937 (Wiener) [Chapter 290, Statutes of 2024] by ensuring that park infrastructure—when directly related to public safety—is not overlooked in development-related funding decisions. CARPD is committed to supporting practical, forward-thinking solutions that build community resilience and protect Californians from the growing threats of climate change. We thank you for your leadership on this important issue."

Arguments in Opposition
According to the Housing Action Coalition and California YIMBY, who have an oppose unless amended position, "The language in SB 937 that was ultimately signed into law was carefully negotiated with the Assembly and Senate Local Government Committees in an effort to strike the balance between local agency need and the alleviation of some of the financial barriers that prevent housing development. While it is our understanding that the intent of SB 499 is to expand the exemption to include park improvements and development to ensure fire, public safety, and emergency management readiness, we believe the language in print would inadvertently create a much broader exemption than intended. We are concerned that this change could open the door to impact fees being charged upfront, negatively impacting project feasibility and ultimately resulting in fewer housing units being built."

According to the California Building Industry Association, "Impact fees for parks are among the most expensive of all fees, exceeding $60,000 per housing unit in some instances. By forcing housing creators to pay these impact fees earlier in the development process, the construction of housing for working families will be negatively impacted, thereby exacerbating the state's housing crisis."

FISCAL COMMENTS

None.

VOTES

SENATE FLOOR: 29-1-10
YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Choi, Cortese, Durazo, Gonzalez, Grove, Hurtado, Laird, Limón, McGuire, McNerney, Niello, Padilla, Pérez, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson
NO: Wiener
ABS, ABST OR NV: Alvarado-Gil, Cervantes, Dahle, Grayson, Jones, Menjivar, Ochoa Bogh, Reyes, Strickland, Valladares

ASM LOCAL GOVERNMENT: 7-0-3
YES: Carrillo, Pacheco, Ramos, Ransom, Blanca Rubio, Ward, Wilson
ABS, ABST OR NV: Ta, Hoover, Stefani

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