

AMENDED IN ASSEMBLY APRIL 17, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2604

Introduced by Assembly Member Torrico

February 22, 2008

An act to amend Section 66007 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 2604, as amended, Torrico. Developer fees.

Existing law prohibits a local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities from requiring the payment of those fees or charges until the date of the final inspection; or the date the certificate of occupancy is issued, whichever occurs first, with specified exceptions. If the fee or charge is not fully paid prior to issuance of a building permit, existing law authorizes the local agency issuing the building permit to require the property owner, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge within the specified time.

This bill would create, until January 1, 2014, another exception by prohibiting a ~~local agency~~ *city, county, or city and county* that imposes ~~any fee or charge~~ *fees* on a residential development for the construction of public facilities, as defined, from requiring the payment of those fees ~~or charges~~ for residential units until the date the certificate of occupancy is issued, ~~or the close of escrow in jurisdictions that already have adopted a policy to defer collection until that time, whichever occurs later~~ *except for a fee necessary to reimburse the city, county, or city*

and county for funds it has expended for public facilities related to the residential development.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 66007 of the Government Code is
2 amended to read:

3 66007. (a) Except as otherwise provided in subdivisions (b)
4 and (g), any local agency that imposes any fees or charges on a
5 residential development for the construction of public
6 improvements or facilities shall not require the payment of those
7 fees or charges, notwithstanding any other provision of law, until
8 the date of the final inspection, or the date the certificate of
9 occupancy is issued, whichever occurs first. However, utility
10 service fees may be collected at the time an application for utility
11 service is received. If the residential development contains more
12 than one dwelling, the local agency may determine whether the
13 fees or charges shall be paid on a pro rata basis for each dwelling
14 when it receives its final inspection or certificate of occupancy,
15 whichever occurs first; on a pro rata basis when a certain
16 percentage of the dwellings have received their final inspection or
17 certificate of occupancy, whichever occurs first; or on a lump-sum
18 basis when the first dwelling in the development receives its final
19 inspection or certificate of occupancy, whichever occurs first.

20 (b) (1) Notwithstanding subdivision (a), the local agency may
21 require the payment of those fees or charges at an earlier time if
22 (A) the local agency determines that the fees or charges will be
23 collected for public improvements or facilities for which an account
24 has been established and funds appropriated and for which the
25 local agency has adopted a proposed construction schedule or plan
26 prior to final inspection or issuance of the certificate of occupancy
27 or (B) the fees or charges are to reimburse the local agency for
28 expenditures previously made. "Appropriated," as used in this
29 subdivision, means authorization by the governing body of the
30 local agency for which the fee is collected to make expenditures
31 and incur obligations for specific purposes.

32 (2) (A) Paragraph (1) does not apply to units reserved for
33 occupancy by lower income households included in a residential

1 development proposed by a nonprofit housing developer in which
2 at least 49 percent of the total units are reserved for occupancy by
3 lower income households, as defined in Section 50079.5 of the
4 Health and Safety Code, at an affordable rent, as defined in Section
5 50053 of the Health and Safety Code. In addition to the contract
6 that may be required under subdivision (c), a city, county, or city
7 and county may require the posting of a performance bond or a
8 letter of credit from a federally insured, recognized depository
9 institution to guarantee payment of any fees or charges that are
10 subject to this paragraph. Fees and charges exempted from
11 paragraph (1) under this paragraph shall become immediately due
12 and payable when the residential development no longer meets
13 the requirements of this paragraph.

14 (B) The exception provided in subparagraph (A) does not apply
15 to fees and charges levied pursuant to Chapter 6 (commencing
16 with Section 17620) of Part 10.5 of Division 1 of Title 1 of the
17 Education Code.

18 (c) (1) If any fee or charge specified in subdivision (a) is not
19 fully paid prior to issuance of a building permit for construction
20 of any portion of the residential development encumbered thereby,
21 the local agency issuing the building permit may require the
22 property owner, or lessee if the lessee's interest appears of record,
23 as a condition of issuance of the building permit, to execute a
24 contract to pay the fee or charge, or applicable portion thereof,
25 within the time specified in subdivision (a). If the fee or charge is
26 prorated pursuant to subdivision (a), the obligation under the
27 contract shall be similarly prorated.

28 (2) The obligation to pay the fee or charge shall inure to the
29 benefit of, and be enforceable by, the local agency that imposed
30 the fee or charge, regardless of whether it is a party to the contract.
31 The contract shall contain a legal description of the property
32 affected, shall be recorded in the office of the county recorder of
33 the county and, from the date of recordation, shall constitute a lien
34 for the payment of the fee or charge, which shall be enforceable
35 against successors in interest to the property owner or lessee at the
36 time of issuance of the building permit. The contract shall be
37 recorded in the grantor-grantee index in the name of the public
38 agency issuing the building permit as grantee and in the name of
39 the property owner or lessee as grantor. The local agency shall
40 record a release of the obligation, containing a legal description

1 of the property, in the event the obligation is paid in full, or a partial
 2 release in the event the fee or charge is prorated pursuant to
 3 subdivision (a).

4 (3) The contract may require the property owner or lessee to
 5 provide appropriate notification of the opening of any escrow for
 6 the sale of the property for which the building permit was issued
 7 and to provide in the escrow instructions that the fee or charge be
 8 paid to the local agency imposing the same from the sale proceeds
 9 in escrow prior to disbursing proceeds to the seller.

10 (d) This section applies only to fees collected by a local agency
 11 to fund the construction of public improvements or facilities. It
 12 does not apply to fees collected to cover the cost of code
 13 enforcement or inspection services, or to other fees collected to
 14 pay for the cost of enforcement of local ordinances or state law.

15 (e) “Final inspection” or “certificate of occupancy,” as used in
 16 this section, have the same meaning as described in Sections 305
 17 and 307 of the Uniform Building Code, International Conference
 18 of Building Officials, 1985 edition.

19 (f) Methods of complying with the requirement in subdivision
 20 (b) that a proposed construction schedule or plan be adopted,
 21 include, but are not limited to, (1) the adoption of the capital
 22 improvement plan described in Section 66002, or (2) the submittal
 23 of a five-year plan for construction and rehabilitation of school
 24 facilities pursuant to subdivision (c) of Section 17017.5 of the
 25 Education Code.

26 (g) Notwithstanding any other provision of law, until January
 27 1, 2014, any ~~local agency~~ *city, county, or city and county* that
 28 imposes ~~any fees or charges~~ *fees* on a residential development for
 29 the construction of public facilities, as defined in Section 66000,
 30 shall not require the payment of those fees ~~or charges~~ for residential
 31 units until the date the certificate of occupancy is issued, ~~or the~~
 32 ~~close of escrow in jurisdictions that already have adopted a policy~~
 33 ~~to defer collection until that time, whichever occurs later.~~ *of*
 34 *occupancy is issued. This subdivision does not require a city,*
 35 *county, or city and county to defer the collection of a fee if that*
 36 *fee is necessary to reimburse the city, county, or city and county*
 37 *for funds it has expended for the construction of public facilities*
 38 *reasonably related to the residential development pursuant to*
 39 *Section 66001. Every city, county, or city and county is encouraged,*

1 *but is not required, to defer the collection of all fees until close of*
2 *escrow.*

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