

AMENDED IN SENATE JULY 8, 1996
AMENDED IN SENATE JUNE 12, 1996
AMENDED IN ASSEMBLY MAY 16, 1996
AMENDED IN ASSEMBLY APRIL 18, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 3081

Introduced by Assembly Member Olberg

February 23, 1996

An act to amend Sections 66000, 66001, and 66020 of the Government Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 3081, as amended, Olberg. Real property: fees for development.

Existing law imposes various requirements with respect to fees exacted in connection with land development approvals by public agencies. Existing law defines the term "fee" as a monetary exaction, other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project.

This bill would revise that definition to state that a fee means a monetary exaction, other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific

project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project.

Under existing law, in any action imposing a fee as a condition of approval of a development project by a local agency, the local agency is required to ~~determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to~~ *make specified determinations with respect to the relationship between the need for, purpose, and amount of the fee and the development project* on which the fee is imposed.

This bill would add to these provisions that a discontinuance of a use of private property, or a change in its designation for zoning or planning purposes, does not deprive the public of a benefit, cause the need for public facilities, or otherwise justify the imposition of a fee. The bill would provide that this provision is not intended *either (1) to supersede specified provisions of law relating to agreements to rent or lease residential accommodations or to otherwise diminish or enhance the power of local agencies to charge a mitigation fee for changing the residential use of property to another residential use or to a nonresidential use to mitigate the impact on lower income households, as defined, or (2) to prevent a local agency from charging a fee under specified provisions for the actual cost to administer the processing of an application, or imposing a fee consistent with the fee limitations based on the additional impact of a new development project proposed for property to be rezoned or following a discontinued use, or to offset the cost of providing replacement mitigation where the property being rezoned or the facility being closed was mitigation associated with a previous approval.*

Existing law permits any party to protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by (a) making payment in full or ensuring performance of the necessary conditions, and (b) serving a notice containing



specified information, including a statement that the required payment is tendered under protest.

This bill, instead, would require the party protesting the imposition of an exaction to make payment in full or provide satisfactory evidence of arrangements to pay the fee when due. The bill would require the statement to be revised to indicate that the required payment will be tendered under protest when due.

Under existing law, a protest filed against the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development is required to be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition thereof. Existing law also provides that any party who files a protest pursuant to these provisions may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition.

This bill, instead, would require each local agency to provide to the project applicant a notice in writing at the time of the approval of the project, or at the time of the imposition of the fees, dedications, reservations, or other exactions, a notification that the 90-day approval period in which the applicant may protest has begun. The bill also would provide that the 180-day period to file an action to attack, review, set aside, void, or annul fees, dedications, reservations, or other exactions imposed on a development by a local agency shall be filed within 180 days after the delivery of the notice required by these provisions.

This bill also would expand these protest provisions to apply not only to residential housing developments but to any project undertaken for the purpose of development, as defined under existing provisions of law.

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 66000 of the Government Code
2 is amended to read:
3 66000. As used in this chapter:
4 (a) "Development project" means any project
5 undertaken for the purpose of development.
6 "Development project" includes a project involving the
7 issuance of a permit for construction or reconstruction,
8 but not a permit to operate.
9 (b) "Fee" means a monetary exaction other than a tax
10 or special assessment, whether established for a broad
11 class of projects by legislation of general applicability or
12 imposed on a specific project on an ad hoc basis, that is
13 charged by a local agency to the applicant in connection
14 with approval of a development project for the purpose
15 of defraying all or a portion of the cost of public facilities
16 related to the development project, but does not include
17 fees specified in Section 66477, fees for processing
18 applications for governmental regulatory actions or
19 approvals, fees collected under development agreements
20 adopted pursuant to Article 2.5 (commencing with
21 Section 65864) of Chapter 4, or fees collected pursuant to
22 agreements with redevelopment agencies which provide
23 for the redevelopment of property in furtherance or for
24 the benefit of a redevelopment project for which a
25 redevelopment plan has been adopted pursuant to the
26 Community Redevelopment Law (Part 1 (commencing
27 with Section 33000) of Division 24 of the Health and
28 Safety Code.
29 (c) "Local agency" means a county, city, whether
30 general law or chartered, city and county, school district,
31 special district, authority, agency, any other municipal
32 public corporation or district, or other political
33 subdivision of the state.
34 (d) "Public facilities" includes public improvements,
35 public services and community amenities.
36 SEC. 2. Section 66001 of the Government Code is
37 amended to read:



1 66001. (a) In any action establishing, increasing, or
2 imposing a fee as a condition of approval of a
3 development project by a local agency on or after January
4 1, 1989, the local agency shall do all of the following:

5 (1) Identify the purpose of the fee.

6 (2) Identify the use to which the fee is to be put. If the
7 use is financing public facilities, the facilities shall be
8 identified. That identification may, but need not, be
9 made by reference to a capital improvement plan as
10 specified in Section 65403 or 66002, may be made in
11 applicable general or specific plan requirements, or may
12 be made in other public documents that identify the
13 public facilities for which the fee is charged.

14 (3) Determine how there is a reasonable relationship
15 between the fee's use and the type of development
16 project on which the fee is imposed.

17 (4) Determine how there is a reasonable relationship
18 between the need for the public facility and the type of
19 development project on which the fee is imposed.

20 (b) In any action imposing a fee as a condition of
21 approval of a development project by a local agency on
22 or after January 1, 1989, the local agency shall determine
23 how there is a reasonable relationship between the
24 amount of the fee and the cost of the public facility or
25 portion of the public facility attributable to the
26 development on which the fee is imposed.

27 (c) A discontinuance of a use of private property, or a
28 change in its designation for zoning or planning purposes,
29 does not deprive the public of a benefit, cause the need
30 for public facilities, or otherwise justify the imposition of
31 a fee. Nothing in this paragraph is intended to ~~prevent~~ *do*
32 *either of the following:*

33 *(1) Supersede subdivision (c) of Section 7060.1, or*
34 *otherwise to diminish or enhance the power of local*
35 *agencies to charge a mitigation fee for changing the*
36 *residential use of property to another residential use or to*
37 *a nonresidential use to mitigate the impact on lower*
38 *income households, as defined by Section 50079.5 of the*
39 *Health and Safety Code.*



1 (2) *Prevent* a local agency from charging a fee under
2 Section 65909.5 for the actual cost to administer the
3 processing of an application, or imposing a fee consistent
4 with the fee limitations otherwise provided in this
5 chapter based on the additional impact of a new
6 development project proposed for property to be
7 rezoned or following a discontinued use, or to offset the
8 cost of providing replacement mitigation where the
9 property being rezoned or the facility being closed was
10 mitigation associated with a previous approval.

11 (d) Upon receipt of a fee subject to this section, the
12 local agency shall deposit, invest, account for, and expend
13 the fees pursuant to Section 66006.

14 (e) The local agency shall make findings once each
15 fiscal year with respect to any portion of the fee
16 remaining unexpended or uncommitted in its account
17 five or more years after deposit of the fee to identify the
18 purpose to which the fee is to be put and to demonstrate
19 a reasonable relationship between the fee and the
20 purpose for which it was charged. The findings required
21 by this subdivision need only be made for moneys in the
22 possession of the local agency and need not be made with
23 respect to letters of credit, bonds, or other instruments
24 taken to secure payment of the fee at a future date.

25 (f) Except as provided in subdivision (f), the local
26 agency shall refund to the then-current record owner or
27 owners of lots or units of the development project or
28 projects on a prorated basis the unexpended or
29 uncommitted portion of the fee, and any interest accrued
30 thereon, for which need cannot be demonstrated
31 pursuant to subdivision (d). A local agency may refund
32 the unexpended or uncommitted revenues by direct
33 payment, by providing a temporary suspension of fees, or
34 by any other means consistent with the intent of this
35 section. The determination by the governing body of the
36 local agency of the means by which those revenues are to
37 be refunded is a legislative act.

38 (g) If the administrative costs of refunding
39 unexpended or uncommitted revenues pursuant to
40 subdivision (e) exceed the amount to be refunded, the



1 local agency, after a public hearing, notice of which has
2 been published pursuant to Section 6061 and posted in
3 three prominent places within the area of the
4 development project, may determine that the revenues
5 shall be allocated for some other purpose for which fees
6 are collected subject to this chapter and which serves the
7 project on which the fee was originally imposed.

8 SEC. 3. Section 66020 of the Government Code is
9 amended to read:

10 66020. (a) Any party may protest the imposition of
11 any fees, dedications, reservations, or other exactions
12 imposed on a development project, as defined in Section
13 66000, by a local agency by meeting both of the following
14 requirements:

15 (1) Tendering any required payment in full or
16 providing satisfactory evidence of arrangements to pay
17 the fee when due or ensure performance of the
18 conditions necessary to meet the requirements of the
19 imposition.

20 (2) Serving written notice on the governing body of
21 the entity, which notice shall contain all of the following
22 information:

23 (A) A statement that the required payment is
24 tendered or will be tendered when due, or that any
25 conditions which have been imposed are provided for or
26 satisfied, under protest.

27 (B) A statement informing the governing body of the
28 factual elements of the dispute and the legal theory
29 forming the basis for the protest.

30 (b) Compliance by any party with subdivision (a) shall
31 not be the basis for a local agency to withhold approval of
32 any map, plan, permit, zone change, license, or other
33 form of permission, or concurrence, whether
34 discretionary, ministerial, or otherwise, incident to, or
35 necessary for, the development project. This section does
36 not limit the ability of a local agency to ensure compliance
37 with all applicable provisions of law in determining
38 whether or not to approve or disapprove a development
39 project.



1 (c) Where a reviewing local agency makes proper and
2 valid findings that the construction of certain public
3 improvements or facilities, the need for which is directly
4 attributable to the proposed development, is required for
5 reasons related to the public health, safety, and welfare,
6 and elects to impose a requirement for construction of
7 those improvements or facilities as a condition of
8 approval of the proposed development, then in the event
9 a protest is lodged pursuant to this section, that approval
10 shall be suspended pending withdrawal of the protest, the
11 expiration of the limitation period of subdivision (d)
12 without the filing of an action, or resolution of any action
13 filed. This subdivision confers no new or independent
14 authority for imposing fees, dedications, reservations, or
15 other exactions not presently governed by other law.

16 (d) (1) A protest filed pursuant to subdivision (a)
17 shall be filed at the time of approval or conditional
18 approval of the development or within 90 days after the
19 date of the imposition of the fees, dedications,
20 reservations, or other exactions to be imposed on a
21 development project. Each local agency shall provide to
22 the project applicant a notice in writing at the time of the
23 approval of the project or at the time of the imposition of
24 the fees, dedications, reservations, or other exactions, and
25 notification that the 90-day approval period in which the
26 applicant may protest has begun.

27 (2) Any party who files a protest pursuant to
28 subdivision (a) may file an action to attack, review, set
29 aside, void, or annul the imposition of the fees,
30 dedications, reservations, or other exactions imposed on
31 a development project by a local agency within 180 days
32 after the delivery of the notice. Thereafter,
33 notwithstanding any other law to the contrary, all persons
34 are barred from any action or proceeding or any defense
35 of invalidity or unreasonableness of the imposition. Any
36 proceeding brought pursuant to this subdivision shall
37 take precedence over all matters of the calendar of the
38 court except criminal, probate, eminent domain, forcible
39 entry, and unlawful detainer proceedings.



1 (e) If the court finds in favor of the plaintiff in any
2 action or proceeding brought pursuant to subdivision (d),
3 the court shall direct the local agency to refund the
4 unlawful portion of the payment, with interest at the rate
5 of 8 percent per annum, or return the unlawful portion
6 of the exaction imposed.

7 (f) (1) If the court grants a judgment to a plaintiff
8 invalidating, as enacted, all or a portion of an ordinance
9 or resolution enacting a fee, dedication, reservation, or
10 other exaction, the court shall direct the local agency to
11 refund the unlawful portion of the payment, plus interest
12 at an annual rate equal to the average rate accrued by the
13 Pooled Money Investment Account during the time
14 elapsed since the payment occurred, or to return the
15 unlawful portion of the exaction imposed.

16 (2) If an action is filed within 120 days of the date at
17 which an ordinance or resolution to establish or modify a
18 fee, dedication, reservation, or other exactions to be
19 imposed on a development project takes effect, the
20 portion of the payment or exaction invalidated shall also
21 be returned to any other person who, under protest
22 pursuant to this section and under that invalid portion of
23 that same ordinance or resolution as enacted, tendered
24 the payment or provided for or satisfied the exaction
25 during the period from 90 days prior to the date of the
26 filing of the action which invalidates the payment or
27 exaction to the date of the entry of the judgment
28 referenced in paragraph (1).

29 (g) Approval or conditional approval of a
30 development occurs, for the purposes of this section,
31 when the tentative map, tentative parcel map, or parcel
32 map is approved or conditionally approved or when the
33 parcel map is recorded if a tentative map or tentative
34 parcel map is not required.

35 (h) The imposition of fees, dedications, reservations,
36 or other exactions occurs, for the purposes of this section,
37 when they are imposed or levied on a specific
38 development.

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