

**From:** [Jacob Patterson](#)  
**To:** [City Clerk](#)  
**Cc:** [Whippy, Isaac](#)  
**Subject:** Public Comment -- 2/12/24 CC Mtg., Item No. 7A, Nexus Study & Fees  
**Date:** Monday, February 12, 2024 11:12:52 AM  
**Attachments:** [Bill Text - AB-602 Development fees impact fee nexus study .pdf](#)  
[202120220AB602\\_Senate Appropriations \(1\).pdf](#)  
[202120220AB602\\_Senate Floor Analyses.pdf](#)  
[202120220AB602\\_Senate Appropriations.pdf](#)  
[202120220AB602\\_Senate Housing.pdf](#)  
[202120220AB602\\_Senate Governance And Finance.pdf](#)  
[09092019 Development Impact.pdf](#)  
[Water Capacity Fees 5-Year Findings.pdf](#)  
[Wastewater Capacity Fees 5-Year Findings.pdf](#)

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City Council,

First, I want to reiterate my objection to the City holding this public hearing on the development impact fees nexus study tonight because, although the City provided a notice of the public hearing more than 30 days ago, the City failed to have the actual nexus study available for the full required notice period. (I know because I requested it several times starting when the notice went out and was always told it wasn't available yet or they would get back to me and ,even when it was finally done, I still had to request it again when it should have been sent to me right away based on my prior requests.) Different types of hearings and reviews have different notice periods. The purpose of these notices is not just so people can save the date on their calendars, it is to facilitate transparency and public oversight and participation in the process. In order to achieve that objective, even if the code language is silent on the matter, the relevant documents need to be complete and available for public review for the whole notice period. In this case, the City's nexus study was not available and it should have been, IMO.

My review was not thorough enough because I did not have enough time to review everything in detail and perform relevant follow-up research about the nexus study itself. This is critically important because the nexus study changed so much from the earlier iterations that were considered at the prior public hearings about these fees--recall that this is not the first noticed hearing for these fees and the City had to reschedule them several times after I objected to the improper process that somehow still happened despite staff and the City Attorney's Office reviewing the prior versions. (I am glad I can confirm that the current study appears to at least be structured correctly with the new fees being calculated on a square footage basis except the stormwater fee, which has an proper explanation and finding to have an alternative basis, and the water and wastewater capacity fees, which are statutorily exempt from that requirement.)

In fact, the nexus study was only provided starting on January 29th because the City was trying to have it available for the 14-day notice period that applies to public hearings for the impact fees themselves, which is also not expressly addressed as a statutory requirement but is understood to be the case because of the length of the notice period. It doesn't take being a lawyer to understand that a notice that technically meets the length of the notice period but which is not accompanied by public availability of the relevant document/study is effectively meaningless. The legislature didn't decide to impose a 30-day notice period in Government Code § 66016.5 for impact fee nexus studies and a shorter 14-day notice period for public hearings adopting the resulting fees for no reason at all, they did so because the full nexus studies are far more complex and require more time to review and research. Unfortunately, the City didn't have a final and complete nexus study available for public review when it sent out

the notice. This is even after repeatedly making both procedural and substantive errors related to how we were trying to adopt these impact fees under the updated Government Code. Why has this process been so flawed and why do I keep having to object to apparent procedural errors, particularly after I highlighted at the prior meetings exactly what was wrong and what needed to happen to do it right?

I think the legislative history of AB602 (the bill that added the 30-day requirement) is relevant to my above points so I have attached the bill text and relevant bill analysis, which can also be found at [https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=202120220AB602](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB602).

Anyway, I was downloading all the development impact fee reports to submit as attachments to this public comment but that would be a huge comment. Instead, I decided to incorporate these City-created reports by reference and by supplying the addresses of the City's webpages where the particular files are available for review and download. That requires listing each one, which follows:

<https://www.city.fortbragg.com/departments/finance-utility-billing/development-impact-fee-reports-ab1600>

#### **Water Capacity Fees**

Development Impact Fees Report Water Capacity Fees Fiscal Year Ended June 30, 2019

<https://www.city.fortbragg.com/home/showpublisheddocument/2216/637725923635230000>

Water Capacity Fees Report Fiscal Year Ended June 30, 2020

<https://www.city.fortbragg.com/home/showpublisheddocument/2222/637725925631200000>

Water Capacity Fees Report Fiscal Year Ended June 30, 2021

<https://www.city.fortbragg.com/home/showpublisheddocument/3913/638078434429630000>

Water Capacity Fees Report Fiscal Year Ended June 30, 2022

<https://www.city.fortbragg.com/home/showpublisheddocument/3929/638080163388170000>

Water Capacity Fees Report Fiscal Year Ended June 30, 2023

<https://cityfortbragg.prod.govaccess.org/home/showdocument?id=5133&t=638428034273654890>

#### **Wastewater (Sewer) Capacity Fees**

Wastewater Capacity Fees Fiscal Year Ended June 30, 2019

<https://www.city.fortbragg.com/home/showpublisheddocument/2212/637725923623030000>

Wastewater Capacity Fees Report Fiscal Year Ended June 30, 2020

<https://www.city.fortbragg.com/home/showpublisheddocument/2214/637725923629600000>

Wastewater Capacity Fees Report Fiscal Year Ended June 30, 2021

<https://www.city.fortbragg.com/home/showpublisheddocument/3917/638078435063900000>

Wastewater Capacity Fees Report Fiscal Year Ended June 30, 2022

<https://www.city.fortbragg.com/home/showpublisheddocument/3927/638080162768000000>

Wastewater Capacity Fees Report Fiscal Year Ended June 30, 2023

<https://cityfortbragg.prod.govaccess.org/home/showdocument?id=5131&t=638428033939272921>

We also have stormwater fees but we don't treat them the same as other impact fees even though they are calculated in the new impact fee nexus study. There may be a valid reason for this but it also might be an oversight and, from a legal compliance perspective, we should be preparing the annual reports for it as well like we do for the above two fees, the General Plan

Maintenance fee, and the Parking-In-Lieu Fee. Please note that on each of the impact fee reports, which are all of the annual reports ever created by the City since we started in September 2019, we have absolutely no expenses charged to either the water or wastewater capacity fee funds. That is despite us making the five-year findings to keep the unspent balances in 2019 and listing the specific projects on which we intended to use the funds we were retaining rather than refunding. This is disturbing to me and demonstrates how we often go through the motions to get people's money, jump over backward to keep it when we really should return it, and then still don't use it only to then try to keep charging future permit applicants similar fees based on other unrealistic and unreliable projected expenses. If we were being honest, I think we would find we don't need to charge these kinds of fees at all because we are so good at securing grant funding to pay for the planning and construction of our local capital projects. That is a good thing but the community is fully benefiting from our funding success because we are still having these unnecessary fees imposed on us. We have no history to show that this will also probably be the case for the new proposed fire, police, and CV Starr fees because we have never collected them but I think the evidence of our ability to get grant funding for many of the types of projects used to calculate the new fees shows they are likely not merited either. To illustrate, the police fee includes projected fleet expenses but didn't we get USDA to buy the new trucks for us? Why start charging development projects for additional new trucks that we will more than likely also receive outside funding for? Development is already overpaying for its "fair share" of these community costs because we impose impact fees and then don't need to sue them because we fund the vast majority of such projects with grants!

Basically, I have included these reports because I believe they demonstrate that we don't actually need to impose these particular fees because we often don't actually spend the money we collect and the fund balances just increase. That is not appropriate and the City should refund the unspent funds--they need to be used within five years of collection--and we shouldn't continue to collect them, even at the proposed reduced rates.

After I pointed out we weren't complying with the reporting requirements, in 2019 the City started trying to comply, including making the five-year findings to keep the unspent balances. I attached the resolutions and the relevant staff report, which, when compared to the annual reports since then, show we charge the fees and keep the funds but didn't use them even on the projected expenses we listed to justify keeping the unspent balances in 2019. (We will have to make these findings again this year and I suggest we just bite the bullet and refund the unspent balances since our purported justifications are just that, only purported rather than based on reality.) As discussed above and in my prior public comments, that is because the projects we used to calculate these fees will more-likely-than-not be funded completely or nearly completely with outside grant funding as has been the case for many years as reflected in the annual reports for these fees. You guys go through the motions of making the findings to impose the fees, collecting this money from people, not spending it, making findings to keep it anyway, still not spending it, and accepting these reports usually without any meaningful discussion only to then ignore what the reports actually tell us when it comes time to calculate the fees in this new nexus study. Apparently you are poised to do that again tonight.

I believe that we shouldn't be charging such high fees because we don't need to and it is making development unnecessarily expensive. I'd rather have more housing being built and more money in our local residents' pockets than building up the City's capital project reserve funds by charging these fees but not using them for the actual projects. As such, I object to the City's proposal to impose the water and wastewater capacity fees based on this structurally

appropriate but substantively flawed nexus study. I am also submitting all this evidence for your consideration and AB602 made clear that you actually need to consider it and not just go through the motions pretending to do so because you trust the City's team is doing their jobs effectively--clearly they weren't or we wouldn't have had to redo everything and reschedule the hearings to comply with the procedural requirements! (I don't blame City Hall staff, primarily this is a problem with how we get our legal advice.) Likewise, I object to the proposed fire and police capacity fees because we won't need that funding either since we are very likely to keep securing grant funding for the projects that were used to calculate the fee in the nexus study under consideration. I don't object to the CV Starr fee because we have so much need for funding that we will be able to spend it and we don;t have the same track record of securing grant funding for that facility.

Currently, I am not on the City Council but, if I were, I would vote to eliminate these fees for residential development. I mean, you have already waived the capacity fees for restaurants in the CBD to encourage commercial development, why not do that for the rest of town to encourage much-needed residential development and to bring down the costs of housing? If we suddenly find ourselves unable to fund our capital projects with state and federal grants, which is unlikely for the foreseeable future, then we can revisit this issue and begin imposing these fees. If you are uncomfortable with that approach, I recommend that even if you vote to impose them tonight, you also direct staff to bring back a resolution to waive these capacity fees for residential development for the next eight years (the life of the nexus study) to see if we can get more development. Keep in mind that any big Mill site development projects will need to put in the base infrastructure so they will already be paying their fair share without these impact fees. I am primarily talking about infill development within the developed parts of our city.

Regards,

--Jacob



## AB-602 Development fees: impact fee nexus study. (2021-2022)

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Date Published: 09/29/2021 10:00 AM

### Assembly Bill No. 602

#### CHAPTER 347

An act to amend Sections 65940.1 and 66019 of, and to add Section 66016.5 to, the Government Code, and to add Section 50466.5 to the Health and Safety Code, relating to land use.

[ Approved by Governor September 28, 2021. Filed with Secretary of State September 28, 2021. ]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 602, Grayson. Development fees: impact fee nexus study.

(1) Existing law, the Permit Streamlining Act, which is part of the Planning and Zoning Law, requires each public agency to provide a development project applicant with a list that specifies the information that will be required from any applicant for a development project. The Mitigation Fee Act requires a local agency that establishes, increases, or imposes a fee as a condition of approval of a development project to, among other things, determine a reasonable relationship between the fee's use and the type of development project on which the fee is imposed. Existing law requires a city, county, or special district that has an internet website to make available on its internet website certain information, as applicable, including its current schedule of fees and exactions.

This bill, among other things, would require, on and after January 1, 2022, a local agency that conducts an impact fee nexus study to follow specific standards and practices, including, but not limited to, (1) that prior to the adoption of an associated development fee, an impact fee nexus study be adopted, (2) that the study identify the existing level of service for each public facility, identify the proposed new level of service, and include an explanation of why the new level of service is necessary, and (3) if the study is adopted after July 1, 2022, either calculate a fee levied or imposed on a housing development project proportionately to the square footage of the proposed units, or make specified findings explaining why square footage is not an appropriate metric to calculate the fees.

This bill would require that a local agency that calculates fees proportionately to the square footage of the proposed units be deemed to have used a valid method to establish a reasonable relationship between the fee charged and the burden posed by the development. The bill would declare that its provisions shall not be construed to relieve a local agency from the requirements of the Mitigation Fee Act, the California Constitution, or applicable case law when calculating the amount of a fee.

This bill would also require a city, county, or special district to post a written fee schedule or a link directly to the written fee schedule on its internet website. The bill would require a city or county to request the total amount of fees and exactions associated with a project upon the issuance of a certificate of occupancy or the final inspection, whichever occurs last, and to post this information on its internet website, as specified. By requiring a city or county to include certain information in, and follow certain standards with regard to, its impact fee nexus

studies and to include certain information on its internet website, the bill would impose a state-mandated local program.

(2) Existing law requires the Department of Housing and Community Development to develop specifications for the structure, functions, and organization of a housing and community development information system for this state. Existing law requires the system to include statistical, demographic, and community development data that will be of assistance to local public entities in the planning and implementation of housing and community development programs.

This bill would require the department, on or before January 1, 2024, to create an impact fee nexus study template that may be used by local jurisdictions. The bill would require that the template include a method of calculating the feasibility of housing being built with a given fee level.

(3) The Mitigation Fee Act requires notice of the time and place of a meeting regarding any fee, that includes a general explanation of the matter to be considered, be mailed at least 14 days before the first meeting to an interested party who files a written request with the city or county for mailed notice of a meeting on a new or increased fee.

This bill would authorize any member of the public, including an applicant for a development project, to submit evidence that the city, county, or other local agency has failed to comply with the Mitigation Fee Act. The bill would require the legislative body of the city, county, or other local agency to consider any timely submitted evidence and authorize the legislative body to change or adjust the proposed fee or fee increase, as specified.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 65940.1 of the Government Code is amended to read:

**65940.1.** (a) (1) A city, county, or special district that has an internet website shall make all of the following available on its internet website, as applicable:

(A) (i) A current schedule of fees, exactions, and affordability requirements imposed by that city, county, or special district, including any dependent special districts, as defined in Section 56032.5, of the city or county applicable to a proposed housing development project.

(ii) The city, county, or special district shall present the information described in clause (i) in a manner that clearly identifies the fees, exactions, and affordability requirements that apply to each parcel and the fees that apply to each new water and sewer utility connection.

(iii) The city, county, or special district shall post a written fee schedule or a link directly to the written fee schedule on its internet website.

(B) All zoning ordinances and development standards adopted by the city or county presenting the information, which shall specify the zoning, design, and development standards that apply to each parcel.

(C) The list required to be compiled pursuant to Section 65940 by the city or county presenting the information.

(D) The current and five previous annual fee reports or the current and five previous annual financial reports, that were required pursuant to subdivision (b) of Section 66006 and subdivision (d) of Section 66013.

(E) An archive of impact fee nexus studies, cost of service studies, or equivalent, conducted by that city, county, or special district on or after January 1, 2018. For purposes of this subparagraph, "cost of service study" means the data provided to the public pursuant to subdivision (a) of Section 66016.

(2) A city, county, or special district shall update the information made available under this subdivision within 30 days of any changes.

(3) (A) A city or county shall request from a development proponent, upon issuance of a certificate of occupancy or the final inspection, whichever occurs last, the total amount of fees and exactions associated with the project for which the certificate was issued. The city or county shall post this information on its internet website, and update it at least twice per year.

(B) A city or county shall not be responsible for the accuracy for the information received and posted pursuant to subparagraph (A). A city or county may include a disclaimer regarding the accuracy of the information posted on its internet website under this paragraph.

(b) For purposes of this section:

(1) "Affordability requirement" means a requirement imposed as a condition of a development of residential units, that the development include a certain percentage of the units affordable for rent or sale to households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code, or an alternative means of compliance with that requirement including, but not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

(2) (A) "Exaction" means any of the following:

(i) A construction excise tax.

(ii) A requirement that the housing development project provide public art or an in-lieu payment.

(iii) Dedications of parkland or in-lieu fees imposed pursuant to Section 66477.

(iv) A special tax levied on new housing units pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).

(B) "Exaction" does not include fees or charges pursuant to Section 66013 that are not imposed (i) in connection with issuing or approving a permit for development or (ii) as a condition of approval of a proposed development, as held in *Capistrano Beach Water Dist. v. Taj Development Corp.* (1999) 72 Cal.App.4th 524.

(3) "Fee" means a fee or charge described in the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020)).

(4) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

(c) This section shall not be construed to alter the existing authority of a city, county, or special district to adopt or impose an exaction or fee.

**SEC. 2.** Section 66016.5 is added to the Government Code, to read:

**66016.5.** (a) On and after January 1, 2022, a local agency that conducts an impact fee nexus study shall follow all of the following standards and practices:

(1) Before the adoption of an associated development fee, an impact fee nexus study shall be adopted.

(2) When applicable, the nexus study shall identify the existing level of service for each public facility, identify the proposed new level of service, and include an explanation of why the new level of service is appropriate.

(3) A nexus study shall include information that supports the local agency's actions, as required by subdivision (a) of Section 66001.

(4) If a nexus study supports the increase of an existing fee, the local agency shall review the assumptions of the nexus study supporting the original fee and evaluate the amount of fees collected under the original fee.

(5) (A) A nexus study adopted after July 1, 2022, shall calculate a fee imposed on a housing development project proportionately to the square footage of proposed units of the development. A local agency that imposes a fee proportionately to the square footage of the proposed units of the development shall be deemed to have used a valid method to establish a reasonable relationship between the fee charged and the burden posed by the development.

(B) A nexus study is not required to comply with subparagraph (A) if the local agency makes a finding that includes all of the following:

(i) An explanation as to why square footage is not appropriate metric to calculate fees imposed on housing development project.

(ii) An explanation that an alternative basis of calculating the fee bears a reasonable relationship between the fee charged and the burden posed by the development.

(iii) That other policies in the fee structure support smaller developments, or otherwise ensure that smaller developments are not charged disproportionate fees.

(C) This paragraph does not prohibit an agency from establishing different fees for different types of developments.

(6) Large jurisdictions shall adopt a capital improvement plan as a part of the nexus study.

(7) All studies shall be adopted at a public hearing with at least 30 days' notice, and the local agency shall notify any member of the public that requests notice of intent to begin an impact fee nexus study of the date of the hearing.

(8) Studies shall be updated at least every eight years, from the period beginning on January 1, 2022.

(9) The local agency may use the impact fee nexus study template developed by the Department of Housing and Community Development pursuant to Section 50466.5 of the Health and Safety Code.

(b) This section does not apply to any fees or charges pursuant to Section 66013.

(c) For purposes of this section:

(1) "Development fee" has the same meaning as defined in subdivision (b) of Section 66000.

(2) "Large jurisdiction" has the same meaning as defined in subdivision (d) of Section 53559.1 of the Health and Safety Code.

(3) "Public facility" has the same meaning as defined in subdivision (d) of Section 66000.

(4) "Local Agency" has the same meaning as defined in subdivision (c) of Section 66000.

(d) Nothing in this section shall be construed to relieve a local agency of the requirement that it comply with Chapter 5 (commencing with Section 66000), the California Constitution, or applicable case law when calculating the amount of a fee.

**SEC. 3.** Section 66019 of the Government Code is amended to read:

**66019.** (a) As used in this section:

(1) "Fee" means a fee as defined in Section 66000, but does not include any of the following:

(A) A fee authorized pursuant to Section 66013.

(B) A fee authorized pursuant to Section 17620 of the Education Code, or Sections 65995.5 and 65995.7.

(C) Rates or charges for water, sewer, or electrical services.

(D) Fees subject to Section 66016.

(2) "Party" means a person, entity, or organization representing a group of people or entities.

(3) "Public facility" means a public facility as defined in Section 66000.



(b) For any fee, notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this subdivision is available shall be mailed at least 14 days prior to the first meeting to an interested party who files a written request with the city, county, or city and county for mailed notice of a meeting on a new or increased fee to be enacted by the city, county, or city and county. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body of the city, county, or city and county may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. The legislative body may send the notice electronically. At least 10 days prior to the meeting, the city, county, or city and county shall make available to the public the data indicating the amount of cost, or the estimated cost, required to provide the public facilities and the revenue sources anticipated to fund those public facilities, including general fund revenues. The new or increased fee shall be effective no earlier than 60 days following the final action on the adoption or increase of the fee, unless the city, county, or city and county follows the procedures set forth in subdivision (b) of Section 66017.

(c) If a city, county, or city and county receives a request for mailed notice pursuant to this section, or a local agency receives a request for mailed notice pursuant to Section 66016, the city, county, or city and county or other local agency may provide the notice via electronic mail for those who specifically request electronic mail notification. A city, county, city or county, or other local agency that provides electronic mail notification pursuant to this subdivision shall send the electronic mail notification to the electronic mail address indicated in the request. The electronic mail notification authorized by this subdivision shall operate as an alternative to the mailed notice required by this section.

(d) (1) Any member of the public, including an applicant for a development project, may submit evidence that the city, county, or other local agency's determinations and findings required pursuant to subdivision (a) of Section 66001 are insufficient or that the local agency otherwise failed to comply with this chapter. Evidence submitted pursuant to this subdivision may include, but is not limited to, information regarding the proposed fee calculation, assumptions, or methodology or the calculation, assumptions, or methodology for an existing fee upon which the proposed fee or fee increase is based.

(2) The legislative body of the city, county, or other local agency shall consider any evidence submitted pursuant to paragraph (1) that is timely submitted under this chapter. After consideration of the evidence, the legislative body of the city, county, or other local agency may change or adjust the proposed fee or fee increase if deemed necessary by the legislative body.

**SEC. 4.** Section 50466.5 is added to the Health and Safety Code, to read:

**50466.5.** (a) On or before January 1, 2024, the department shall create an impact fee nexus study template that may be used by local jurisdictions. The template shall include a method of calculating the feasibility of housing being built with a given fee level.

(b) The department may contract with nonprofit or academic institutions to complete the template.

**SEC. 5.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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# SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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## AB 602 (Grayson) - Development fees: impact fee nexus study

**Version:** July 5, 2021

**Policy Vote:** GOV. & F. 5 - 0, HOUSING 9  
- 0

**Urgency:** No

**Mandate:** Yes

**Hearing Date:** August 16, 2021

**Consultant:** Mark McKenzie

**Bill Summary:** AB 602 would require the Department of Housing and Community Development (HCD) to create an impact fee nexus study template for use by local jurisdictions by January 1, 2024. The bill would also impose new requirements on local agencies regarding the preparation of impact fee nexus studies, and make related changes, as specified.

### Fiscal Impact:

- HCD estimates costs of \$358,000 in the first two years for 2.0 PY of staff, and \$178,000 annually ongoing for 1.0 PY of staff to coordinate with a contractor, create an impact fee nexus study template, develop a method of calculating housing feasibility at certain fee levels, and provide technical assistance to local agencies. (General Fund)
- HCD estimates additional one-time costs of approximately \$300,000 for contracting with a specified entity to develop the template. (General Fund)
- Unknown, significant local costs for cities, counties, and special districts to comply with new requirements regarding the preparation and adoption of impact fee nexus studies, update fee nexus studies every eight years, and post specified information on local agency websites. These costs are not state-reimbursable because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses. (local funds)

**Background:** Since the passage of Proposition 13 and other measures limiting local agencies' general revenue sources, local agencies have increasingly required development projects to bear their own costs within the community. Existing law, the Mitigation Fee Act (Act), defines a "fee" as a monetary exaction (other than a tax or special assessment) that is charged by a local agency to an applicant in connection with approval of a development project for the purposes of defraying all or a portion of the cost of public facilities related to the project. When establishing, increasing, or imposing a fee as a condition of approving a development project, existing law requires local officials to identify the purpose of the fee and public facilities to be financed, and determine a reasonable relationship between the development project and use of the fee, as well as the relationship between need for the public facility and the type of project on which the fee is imposed.

When imposing a fee as a condition of approving a development project, the Act also requires local officials to determine a reasonable relationship between the fee's amount

and the cost of the public facility or portion of the facility attributable to the development. As a result of court decisions and the Act, local governments must conduct a nexus study to ensure that any proposed development fees meet “essential nexus” and “rough proportionality” legal tests to ensure that conditions on development are related to a project’s impacts. Other requirements in the Mitigation Fee Act ensure that development fees are appropriately levied and spent.

Cities and counties typically charge more than two dozen different types of development-related fees, most of which fall into three broad categories: (1) planning fees, which cover administrative costs of reviewing planning documents; (2) building permit, plan check, and inspection fees, which cover site-specific review requirements; and (3) capital facilities fees, which cover up-front costs of providing capital infrastructure. The largest component is usually capital facilities fees and may cover on-site costs of connecting to utilities, broader off-site impact fees associated with providing infrastructure to serve residential development, mitigation fees, and in-lieu fees. Local development fees may vary significantly by jurisdiction for a variety of reasons (density, land use, location, etc.), and these fees may be a sizable component of housing production costs.

Existing law, as enacted by AB 1483 (Grayson), Chap. 662/2019, requires a city, county, or special district that has an internet website to post specified information, including: a current schedule of mitigation fees, exactions, and affordability requirements applicable to a housing development project; all zoning ordinances and development standards; the current and five previous annual fee reports or annual financial reports; and an archive of impact fee nexus studies, cost of service studies, or equivalent, as specified. Existing law requires a city, county, or special district to update this information on its website within 30 days of any changes.

**Proposed Law:** AB 602 would require HCD, by January 1, 2024, to create an impact fee nexus study template for use by local jurisdictions that includes a method of calculating the feasibility of housing being built with a given fee level. The bill would authorize HCD to contract with nonprofit or academic institutions to complete the template.

AB 602 would also require, on or after January 1, 2022, a city, county, or special district that conducts an impact fee nexus study to conduct that study prior to adopting the associated development fee, and to follow all of the following standards and practices:

- Identify, as applicable, the existing and proposed level of service for each public facility and an explanation of why the new level of service is appropriate.
- Include information that supports the local agency’s actions, as specified.
- Review the assumptions of the nexus study supporting the original fee and evaluate the amount of fees collected, if the study supports increasing an existing fee.
- For nexus studies adopted after July 1, 2022, calculate a fee imposed on a housing development project proportionately to the square footage of the proposed units in the development, which shall be deemed to bear a reasonable relationship between the need for the public facility and the type of project on which the fee is imposed.
- Specify that an alternative method for calculating the fee if a local agency makes a finding explaining why square footage is not an appropriate metric and that the alternative basis bears a reasonable relationship between the need for the public facility and the type of project on which the fee is imposed.

- Require large jurisdictions to adopt a capital improvement plan as part of the nexus study.
- Require all studies to be adopted at a public hearing with at least 30 days' notice, and to notify any member of the public of the date of the hearing, as specified.
- Require all nexus studies to be updated at least every eight years, from the period beginning on January 1, 2022.
- Authorize a local agency to use the nexus study template developed by HCD.
- Specify that the bill's requirements do not apply to water or sewer connection or capacity charges.

AB 602 would also do the following:

- Require a city, county, or special district to post a written fee schedule, or a link to that schedule on its website.
- Require a city, county, or special district to request from a development proponent, upon issuance of a certificate of occupancy or the final inspection, whichever occurs last, the total amount of fees and exactions associated with the project. The local agency must post this information on its website and update it at least twice a year, and may post a disclaimer regarding the accuracy of the information.
- Authorize any member of the public, including an applicant for a development project, to submit evidence, as specified, to the local agency that its findings are insufficient, or that the local agency otherwise failed to comply with this bill. The legislative body of that local agency must consider any such evidence and authorizes the legislative body to change or adjust the proposed fee or fee increase if it deems necessary.

**Related Legislation:** AB 1483 (Grayson), Chap. 662/2019, included provisions requiring cities, counties, and special districts to post certain housing-related information on their websites, including schedules of mitigation fees, an archive of impact fee nexus studies, and annual fee reports, as specified.

AB 879 (Grayson), Chap. /2017, required HCD to complete a study to evaluate the reasonableness of local fees charged for new developments, as specified.

**Staff Comments:** In November of 2020, the Turner Center for Housing Innovation released a report on nexus studies entitled *Improving Impact Fees in California: Rethinking the Nexus Studies Requirement*. The report found that in many cases, nexus studies do not clearly identify the current level of service and do not always use methodologies that tie fees closely to the direct impacts of the new development. Finally, the study noted that nexus studies in general, and the fee-setting process more broadly, do not require a review of whether the fee would have negative financial consequences for housing development. The report recommended that the state set standards for nexus studies; that local agencies use methodologies that more closely tie fees to direct impacts of new development; and that local agencies incorporate consideration of feasibility into mechanisms for triggering review. This bill is intended to address some of the deficiencies noted in the report.

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THIRD READING

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Bill No: AB 602  
Author: Grayson (D), et al.  
Amended: 8/26/21 in Senate  
Vote: 21

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SENATE GOVERNANCE & FIN. COMMITTEE: 5-0, 7/1/21  
AYES: McGuire, Nielsen, Durazo, Hertzberg, Wiener

SENATE HOUSING COMMITTEE: 9-0, 7/8/21  
AYES: Cortese, Bates, Caballero, Eggman, McGuire, Ochoa Bogh, Skinner,  
Umberg, Wieckowski

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/26/21  
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, McGuire

ASSEMBLY FLOOR: 76-0, 5/27/21 - See last page for vote

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**SUBJECT:** Development fees: impact fee nexus study

**SOURCE:** Author

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**DIGEST:** This bill adds new requirements to impact fee nexus studies prepared by cities, counties, and special districts, and makes other related changes.

**ANALYSIS:**

Existing law:

- 1) Allows local governments to require applicants for development projects to pay fees to mitigate the project's effects, known as mitigation fees.
- 2) Requires, under the Mitigation Fee Act, local officials that are establishing, increasing, or imposing a fee as a condition of approving a development project 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.
  - e) Determine a reasonable relationship between the fee's amount and the cost of the public facility.
  - f) Hold at least one open and public meeting prior to levying a new fee or increasing an existing one;
  - g) If they decide to adopt capital improvement plans, indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees;
  - h) Deposit and spend the fees within five years of collecting them; and
  - i) Refund fees or make specific findings on when and how the fees will be spent for construction, if the fees aren't spent within five years of collection.
- 3) Requires local agencies to deposit mitigation fees to fund a capital improvement associated with a development in a separate account or fund.
  - 4) Requires local agencies that impose mitigation fees to produce an annual report within 180 days of the end of the fiscal year that includes specified information.
  - 5) Requires a city, county, or special district that has an internet website to post and update on their websites specified information, including a current schedule of housing development project costs, zoning ordinances and development standards, annual impact fee reports, and an archive of specified impact fee nexus studies.

This bill:

- 1) Requires a city, county, or special district to conduct and adopt a nexus study prior to the adoption of an impact fee, and follow certain standards and practices:
  - a) When applicable, identify the existing level of service for each public facility and any proposed new level of service, and include an explanation why the new level of service is appropriate.

- b) Include information that supports the local agency's actions as specified.
  - c) If a nexus study supports a fee increase, review the original nexus study fee assumptions and evaluate the amount of fees collected under the original fee.
  - d) For nexus studies adopted after July 1, 2022, calculate the fee proportionately to the square footage of the proposed units, unless the local agency makes a finding that another standard is more appropriate as specified. If a local agency imposes a fee proportionate to the square footage, it shall be deemed to have used a valid method to establish a reasonable relationship between the fee charged and the burden posed by the development.
  - e) Adopt a capital improvement plan in jurisdictions located in counties with over 250,000 residents.
  - f) Adopt nexus studies at a public hearing with at least 30 days' notice, and provide notice to members of the public that request it as specified.
  - g) Update nexus studies every eight years, from the period beginning on January 1, 2022.
- 2) Provides that nothing in the bill shall be construed to relieve a local agency from requirements to comply with the Mitigation Fee Act, the California Constitution, or applicable case law when calculating fee amounts.
  - 3) Allows a local agency to use the impact fee nexus study template the measure requires HCD to develop by January 1, 2024.
  - 4) Provides that its provisions do not apply to water and sewer connection and capacity charges.
  - 5) Provides that any member of the public can submit evidence that local agency findings are insufficient or the local agency failed to comply with specified requirements. The legislative body must consider any such evidence and can change or adjust the fee if they deem necessary.
  - 6) Requires every city, county, or special district that has a website to post a written fee schedule or a link directly to the written fee schedule on its internet website.
  - 7) Requires cities and counties to request from a development proponent, upon issuance of a certificate of occupancy or final inspection, whichever occurs last,

the total amount of fees and exactions associated with the project. The city or county must post this information on its internet website, and update it at least twice per year, but is not responsible for its accuracy. The city or county may also include a disclaimer regarding the accuracy of this information.

## **Background**

Concerned that mitigation fees may be increasing the cost of housing, in 2017 the Legislature enacted AB 879 (Grayson, Chapter 374, Statutes of 2017), which required the Department of Housing and Community Development (HCD) to complete a study to evaluate the reasonableness of local fees charged to new developments. On August 7<sup>th</sup>, 2019, HCD released the study, performed by the Turner Center for Housing Innovation (Turner Center). The study's findings concerned three categories: fee transparency, fee structure, and fee design. Among other conclusions, the study argued that fees can be a barrier to development and raise prices of both new and existing homes. However, the study 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.

Consistent with previous studies by the Turner Center and others, the report found that fee transparency could be substantially improved. According to the study, many jurisdictions do not post their fee schedules or their nexus studies online, making it hard for developers to know their costs ahead of time. Meanwhile, other jurisdictions have adopted best practices, such as offering an estimate of the fees that a project would pay. The study recommended requiring local governments to post fees and nexus studies online, as well as annual reports on fee collections, and requiring jurisdictions to provide fee estimates. To address transparency concerns, AB 1483 (Grayson, Chapter 662, Statutes of 2019) required cities and counties to post specified housing-related information on their web sites and requires HCD to establish a workgroup, as specified, to develop a strategy for state housing data.

In November 2020, the Turner Center released a report focused on the preparation of nexus studies. The study found that in many cases, nexus studies do not clearly identify the current level of service and do not always use methodologies that tie fees closely to direct impacts of new development. Finally, the study noted that nexus studies and the fee setting process more broadly do not require a review of whether the fee would have negative financial consequences for housing development. The author wants to implement some of these recommendations to improve impact fee transparency.

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



According to the Senate Appropriations Committee:

- HCD estimates costs of \$358,000 in the first two years for 2.0 PY of staff, and \$178,000 annually ongoing for 1.0 PY of staff to coordinate with a contractor, create an impact fee nexus study template, develop a method of calculating housing feasibility at certain fee levels, and provide technical assistance to local agencies. (General Fund)
- HCD estimates additional one-time costs of approximately \$300,000 for contracting with a specified entity to develop the template. (General Fund)
- Unknown, significant local costs for cities, counties, and special districts to comply with new requirements regarding the preparation and adoption of impact fee nexus studies, update fee nexus studies every eight years, and post specified information on local agency websites. These costs are not state-reimbursable because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses. (local funds)

**SUPPORT:** (Verified 8/27/21)

Bay Area Council  
California Association of Realtors  
California Manufactured Housing Institute  
California YIMBY  
Casita Coalition  
California Building Industry Association  
California Housing Partnership  
Council of Infill Builders  
Generation Housing  
Greenbelt Alliance  
Habitat for Humanity California  
Hello Housing  
Housing Action Coalition  
LISC San Diego  
SPUR  
SV@Home  
The Two Hundred  
TMG Partners

**OPPOSITION:** (Verified 8/27/21)

American Planning Association California Chapter  
California Special Districts Association  
California State Association of Counties  
Catalysts for Local Control  
City of Fremont  
City of Oceanside  
City of Torrance  
League of California Cities  
Riviera Homeowners Association  
Rural County Representatives of California  
Urban Counties of California

**ARGUMENTS IN SUPPORT:** According to the author, “Local jurisdictions levy development fees to pay for the services needed to support new housing and to offset the impacts of growth in a community. These fees can make up a substantial portion of the cost to build new housing in California cities. In a March 2018 report, UC Berkeley’s Turner Center for Housing Innovation found that development fees can amount to anywhere from 6 percent to 18 percent of the median price of a home depending on location. In order for impact fees to be legally valid, they must comply with the rules and regulations established by the Mitigation Fee Act and be justified through the use of a ‘nexus study’ which illustrates the relationship between new development and its incremental impacts on infrastructure. In November of 2020, the Turner Center released a report which stressed the need for additional guidance on how local jurisdictions conduct nexus studies, which are currently governed by an opaque and informal patchwork of guidelines and common practices. AB 602 establishes basic transparency and accountability standards for nexus studies, and tasks the Department of Housing and Community Development (HCD) with developing a template for nexus studies that local governments can use.”

**ARGUMENTS IN OPPOSITION:** According to a coalition of local government organizations, “While there has been progress with amendments to address our prior concerns, there are unfortunately two remaining issues for our organizations, both of which will create additional costs for the state and local agencies. Specifically, we are opposed to development of a nexus fee template by the Housing and Community Development Department (HCD). While HCD has extensive experience in funding housing and has occasionally provided grant funding to support infrastructure improvements on a project-by-project basis, the Department does not have expertise related to planning, building and funding

infrastructure at a community scale. Moreover, we note that the bill does not explicitly require the Department to consult with entities that have such experience. We also note that the Mitigation Fee Act extends beyond residential projects, to include commercial and industrial developments, which have very different infrastructure impacts and needs...Finally, we oppose the requirement for capital improvement planning, although it is now limited to ‘large jurisdictions’ as defined by Health and Safety Code Section 53559.1—that is, any county with a population of at least 250,000 or any city located therein, regardless of population. Much of the same additional informational value offered by the capital improvement planning process would be encompassed in a well-designed nexus study, especially if the other changes to nexus studies envisioned by AB 602 are enacted. We note that the study prepared pursuant to AB 879 (Grayson, 2018) identified more rigorous capital improvement planning as a best practice but included the caveat that the state should consider additional financial support to local agencies to support this heightened workload. This requirement would create additional costs for local agencies, which would most likely be passed on to development proponents in the form of higher fees.”

ASSEMBLY FLOOR: 76-0, 5/27/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Petrie-Norris, Seyarto

Prepared by: Jonathan Peterson / GOV. & F. / (916) 651-4119  
8/31/21 9:31:09

\*\*\*\* END \*\*\*\*

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# SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair

2021 - 2022 Regular Session

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## AB 602 (Grayson) - Development fees: impact fee nexus study

**Version:** July 5, 2021

**Policy Vote:** GOV. & F. 5 - 0, HOUSING 9  
- 0

**Urgency:** No

**Mandate:** Yes

**Hearing Date:** August 26, 2021

**Consultant:** Mark McKenzie

**Bill Summary:** AB 602 would require the Department of Housing and Community Development (HCD) to create an impact fee nexus study template for use by local jurisdictions by January 1, 2024. The bill would also impose new requirements on local agencies regarding the preparation of impact fee nexus studies, and make related changes, as specified.

### \*\*\*\*\* ANALYSIS ADDENDUM – SUSPENSE FILE \*\*\*\*\*

The following information is revised to reflect amendments  
adopted by the committee on August 26, 2021

#### **Fiscal Impact:**

- HCD estimates costs of \$358,000 in the first two years for 2.0 PY of staff, and \$178,000 annually ongoing for 1.0 PY of staff to coordinate with a contractor, create an impact fee nexus study template, develop a method of calculating housing feasibility at certain fee levels, and provide technical assistance to local agencies. (General Fund)
- HCD estimates additional one-time costs of approximately \$300,000 for contracting with a specified entity to develop the template. (General Fund)
- Unknown, significant local costs for cities, counties, and special districts to comply with new requirements regarding the preparation and adoption of impact fee nexus studies, update fee nexus studies every eight years, and post specified information on local agency websites. These costs are not state-reimbursable because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses. (local funds)

#### **Author Amendments:**

- Specify that a local agency that imposes a fee proportionately to the square footage of proposed units would be deemed to have used a valid method to establish a reasonable relationship between the fee charged and the impact of the development.
- Make other clarifying and technical changes.

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**SENATE COMMITTEE ON HOUSING**  
**Senator Scott Wiener, Chair**  
**2021 - 2022 Regular**

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<b>Bill No:</b>	AB 602	<b>Hearing Date:</b>	7/8/2021
<b>Author:</b>	Grayson		
<b>Version:</b>	7/1/2021 Amended		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Erin Riches		

**SUBJECT:** Development fees: impact fee nexus study

**DIGEST:** This bill imposes a number of new requirements to impact fee nexus studies prepared by cities, counties, and special districts, and makes related changes, as specified.

**ANALYSIS:**

*Existing law:*

- 1) Requires every city and county to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.
- 2) Establishes, under the Mitigation Fee Act, specific requirements a city must follow in establishing or imposing development fees and sets forth a process by which a developer may challenge the imposition of a fee.
- 3) Requires a city, county, or special district (as applicable), pursuant to AB 1483 (Grayson, 2019), to post on its Web site specified information including: a current schedule of mitigation fees, exactions, and affordability requirements applicable to a housing development project; all zoning ordinances and development standards; the current and five previous annual fee reports or annual financial reports; and an archive of impact fee nexus studies, cost of service studies, or equivalent, as specified. Requires this information to be updated within 30 days of any changes.
- 4) Requires HCD, pursuant to AB 1483 (Grayson, 2019), to include as part of the statewide housing plan, a 10-year housing data strategy that identifies the data

useful to enforce existing housing laws and inform state housing policymaking, as specified. Requires HCD to establish a workgroup, as specified, in developing this strategy.

**This bill:**

- 1) Requires HCD, on or before January 1, 2024, to create an impact fee nexus study template that may be used by local jurisdictions. The template shall include a method of calculating the feasibility of housing being built with a given fee level. Authorizes HCD to contract with non-profit or academic institutions to complete the template.
- 2) Requires a city, county, or special district to post a written fee schedule, or a link directly to the written fee schedule, on its Web site.
- 3) Requires a city or county to request from a development proponent, upon issuance of a certificate of occupancy or the final inspection, whichever occurs last, the total amount of fees and exactions associated with the project. Requires the city or county to post this information on its website and update it at least twice per year. Allows a city or county to post a disclaimer regarding the accuracy of this information.
- 4) Requires a city, county, or special district that conducts an impact fee nexus study on or after January 1, 2022 to adopt the nexus fee study prior to adopting the associated development fee. Requires the nexus fee study to:
  - a) Include, as applicable, the existing level of service for each public facility, the proposed new level of service, and an explanation of why the new level of service is appropriate.
  - b) Include information supporting the local agency's actions, as specified.
  - c) Review the assumptions supporting the original fee and evaluate the amount collected under the original fee, if the study supports increasing an existing fee.
- 5) Requires a nexus fee study adopted after July 1, 2022, to calculate a fee imposed on a housing development project proportionately to the square footage of the proposed units in the development. This fee shall be deemed to bear a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

- 6) Provides that an agency is not prohibited from establishing different fees for different types of developments. Exempts a nexus fee study from the requirement in (5) if the city, county, or special district makes a finding that includes:
  - a) An explanation of why square footage is not an appropriate metric to calculate fees imposed on the housing development project.
  - b) An explanation that an alternative basis of calculating the fee bears a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.
  - c) A finding that other policies in the fee structure support smaller developments, or otherwise ensure that smaller developments are not charged disproportionate fees.
- 7) Requires large jurisdictions to adopt a capital improvement plan as part of the nexus study.
- 8) Requires all nexus studies to be adopted at a public hearing with at least 30 days' notice. Requires the local agency to notify any member of the public that requests it, of the date of the hearing at which it will begin the study.
- 9) Requires all nexus studies to be updated at least every eight years, from the period beginning January 1, 2022.
- 10) Authorizes a local agency to use the impact fee nexus study template developed by HCD as required in (1).
- 11) Provides that this bill does not apply to water or sewer connection or capacity charges.
- 12) Authorizes any member of the public, including an applicant for a development project, to submit evidence, as specified, to the city, county, or other local agency that its findings are insufficient or that the local agency otherwise failed to comply with this bill. Requires the legislative body of a city, county, or other local agency to consider any such evidence and authorizes the legislative body to change or adjust the proposed fee or fee increase if it deems necessary.

**COMMENTS:**

- 1) *Author's statement.* “Local jurisdictions levy development fees to pay for the services needed to support new housing and to offset the impacts of growth in a community. These fees can make up a substantial portion of the cost to build new housing in California cities. In a March 2018 report, UC Berkeley’s Turner Center for Housing Innovation found that development fees can amount to anywhere from 6-18% of the median price of a home depending on the location. In order for impact fees to be legally valid, they must comply with the rules and regulations established by the Mitigation Fee Act and be justified through the use of a ‘nexus study’ which illustrates the relationship between new development and its incremental impacts on infrastructure. In November of 2020, the Turner Center released a report which stressed the need for additional guidance on how local jurisdictions conduct nexus studies, which are currently governed by an opaque and informal patchwork of guidelines and common practices. AB 602 establishes basic transparency and accountability standards for nexus studies, and tasks HCD with developing a template for nexus studies that local governments can use.”
- 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 the passage 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) *Do impact fees drive up housing construction costs?* Concerned that mitigation fees could be increasing the cost of housing, the Legislature passed AB 879 (Grayson, 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 report found that fee transparency could be substantially improved. According to the study, many jurisdictions do not post their fee schedules or their nexus studies online, making it difficult for developers to estimate project costs, while other jurisdictions have adopted best practices such as offering an estimate of the fees that a project would pay. The study recommended requiring local governments to post fees and nexus studies online, as well as annual reports on fee collections, and requiring jurisdictions to provide fee estimates. In response, the Legislature passed AB 1483 (Grayson, 2019), which required cities and counties to post specified housing-related information on their website and required HCD to establish a workgroup to develop a strategy for state housing data.

In February 2020, the Senate Housing Committee, Senate Governance & Finance Committee, Assembly Housing Committee, and Assembly Local Government Committee convened a joint hearing titled “The Price of Civilization: Benefits and Costs of Impact Fees on Housing in California.”<sup>2</sup> At this hearing, committee members heard from experts on the legal framework governing impact fees, learned about common uses of impact fees, reviewed how local governments use impact fees to achieve local policy goals, and heard from academic experts on recent research on the effects of impact fees on the building industry.

In November 2020, the Turner Center released a report focused on the preparation of nexus studies.<sup>3</sup> The report found that in many cases, nexus studies do not clearly identify the current level of service and do not always use methodologies that tie fees closely to the direct impacts of the new development. Finally, the study noted that nexus studies in general, and the fee-setting process more broadly, do not require a review of whether the fee would have negative financial consequences for housing development. The

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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)

<sup>2</sup> Senate Committees on Governance and Finance and Housing and Assembly Committees on Local Government and Housing. *Background Paper* (February 2020). <https://shou.senate.ca.gov/sites/shou.senate.ca.gov/files/Mitigation%20fee%20background%20paper%20final.pdf>

<sup>3</sup> Turner Center for Housing Innovation, UC Berkeley. *Improving Impact Fees in California: Rethinking the Nexus Studies Requirement* (November 2020). [https://turnercenter.berkeley.edu/wp-content/uploads/2020/12/Nexus\\_Studies\\_November\\_2020.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/2020/12/Nexus_Studies_November_2020.pdf)

report recommended that the state set standards for nexus studies; that local agencies use methodologies that more closely tie fees to direct impacts of new development; and that local agencies incorporate consideration of feasibility into mechanisms for triggering review.

- 4) *Increasing transparency of impact fees.* This bill aims to increase the transparency of impact fees. The California Homebuilding Alliance, a coalition of builders, realtors, developers, and others, writing in support of this bill, notes that “Nexus studies are currently governed by an opaque and informal patchwork of guidelines and common practices.” This bill requires HCD to establish template for nexus fee studies, establishes specific requirements to help standardize nexus fee adoption and nexus fee studies, requires regular updates of nexus fee studies, and requires nexus fee studies to be adopted at a public hearing. Although this bill does not require any reductions of impact fees, it aims to help developers cut costs in terms of project time by making it easier to navigate local impact fee information.
- 5) *Opposition concerns.* A coalition of local government organizations including planners, cities, and counties objects to this bill’s requirement for HCD to develop a nexus fee template. The coalition states that HCD does not have the needed expertise and that the bill does not require HCD to consult with stakeholders in developing the template. The coalition also opposes the requirement for capital improvement planning, which it states will create additional costs for local agencies that would most likely be passed on to development proponents in the form of higher fees.
- 6) *Double referral.* This bill passed out of the Governance & Finance Committee on an 5-0 vote on July 1<sup>st</sup>.

#### **RELATED LEGISLATION:**

**AB 1483 (Grayson, Chapter 662, Statutes of 2019)** — required cities and counties to post specified housing-related information on their websites and requires HCD to establish a workgroup to develop a strategy for state housing data, as specified.

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

**POSITIONS: (Communicated to the committee before noon on Thursday, July 1, 2021.)**

**SUPPORT:**

California YIMBY (Co-Sponsor)  
Habitat for Humanity California (Co-Sponsor)  
Bay Area Council  
California Association of Realtors  
California Building Industry Association  
Casita Coalition  
Council of Infill Builders  
Greenbelt Alliance  
Hello Housing  
Housing Action Coalition  
LISC San Diego  
San Francisco Bay Area Planning and Research Association (SPUR)  
Silicon Valley @ Home  
The Two Hundred  
TMG Partners

**OPPOSITION:**

American Planning Association, California Chapter  
California State Association of Counties  
City of Fremont  
League of California Cities  
Rural County Representatives of California  
Urban Counties of California

**-- END --**

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## SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair

2021 - 2022 Regular

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**Bill No:** AB 602  
**Author:** Grayson  
**Version:** 5/4/21  
**Consultant:** Peterson

**Hearing Date:** 7/1/21  
**Tax Levy:** No  
**Fiscal:** Yes

### ***DEVELOPMENT FEES: IMPACT FEE NEXUS STUDY***

*Adds new requirements to impact fee nexus studies prepared by cities, counties, and special districts, and makes other related changes.*

#### **Background**

**Local government finance after Proposition 13.** A series of propositions have drastically cut into local revenue sources, requiring local governments to look elsewhere to fund services that the public demands. First, Proposition 13 (1978) capped property tax rates at 1% of assessed value (which only changes upon new construction or when ownership changes) and required 2/3 voter approval for special taxes; as a result local governments turned to general taxes to avoid the higher voter threshold. When Proposition 62 (1986) required majority voter approval of general taxes, local agencies imposed assessments that were more closely tied to the benefit that an individual property owner receives. Subsequently, Proposition 218 (1996) required voter approval of parcel taxes, assessments, and property-related fees.

In response to the reduction in property tax revenues from Proposition 13 and the difficulty of raising taxes, local agencies have turned to other sources of funds for general operations, including sales taxes and transient occupancy taxes, also known as hotel taxes. Commercial enterprises generate sales tax and hotel tax revenue, and simultaneously pay property taxes and demand relatively few services (such as public safety or parks). Residential developments, by contrast, do not directly generate sales or hotel tax revenue, and the new residents demand a wider variety of more intensive services. As a result, cities and counties face a disincentive to approve housing because of the higher net fiscal cost of residential development, particularly if they have the option to instead permit commercial development that may produce net fiscal benefits, also known as the fiscalization of land use.

Since they cannot impose broad-based taxes without great difficulty, cities and counties follow a simple principle: new developments should pay for the impacts that they have on the community and the burden they impose on public services.

**Mitigation Fee Act.** When approving development projects, counties and cities can require the applicants to mitigate the project's effects by paying fees—known as mitigation fees, impact fees, or developer fees. The California courts have upheld impact fees for sidewalks, parks, school construction, and many other public purposes.

When establishing, increasing, or imposing a fee as a condition of approving a development project, the Mitigation Fee Act requires local officials to:

- Identify the fee's purpose;
- Identify the fee's use, including the public facilities to be financed ;
- Determine a reasonable relationship between the fee's use and the development; and
- Determine a reasonable relationship between the public facility's need and the development.

When imposing a fee as a condition of approving a development project, the Mitigation Fee Act also requires local officials to determine a reasonable relationship between the fee's amount and the cost of the public facility. In its 1987 *Nollan* decision, the U.S. Supreme Court said that 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 said that conditions 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:

- Hold at least one open and public meeting prior to levying a new fee or increasing an existing one;
- If they decide to adopt capital improvement plans, indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees;
- Deposit and spend the fees within five years of collecting them; and
- 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.

Cities and counties cannot collect impact fees before they conduct the final inspection or issue a certificate of occupancy, although impact fees for utilities may be collected earlier.

If a local agency levies an impact fee to fund a capital improvement associated with a development, it must deposit the fees with any other fees for that improvement in a separate account or fund.

Local officials must also produce an annual report within 180 days of the end of the fiscal year that includes:

- A brief description of the type of fee in the account or fund;

- The amount of the fee;
- The beginning and ending balance of the account or fund;
- The amount of the fees collected and the interest earned;
- An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees;
- An identification of an approximate date by which the construction of the public improvement will commence;
- A description of each interfund transfer or loan made from the account or fund; and
- The amount of refunds of fees unspent after five years.

**Recent work on impact fees.** On February 26, 2020, the Senate Governance and Finance Committee, Senate Housing Committee, Assembly Committee on Local Government, and the Assembly Committee on Housing and Community Development hosted a hearing titled, “The Price of Civilization: Benefits and Costs of Impact Fees on Housing in California.” At this hearing, committee members heard from experts on the legal framework governing impact fees, learned about common uses of impact fees, reviewed how local governments use impact fees to achieve local policy goals, and heard from academic experts on recent research on the effects of impact fees on the building industry. This recent research is summarized below.

Concerned that mitigation fees may be increasing the cost of housing, in 2017 the Legislature enacted AB 879 (Grayson), which required the Department of Housing and Community Development (HCD) to complete a study to evaluate the reasonableness of local fees charged to new developments. On August 7<sup>th</sup>, 2019, HCD released the study, performed by the Turner Center for Housing Innovation (Turner Center). The study’s findings concerned three categories: fee transparency; fee structure; and fee design. Among other conclusions, the study argued that fees can be a barrier to development and raise prices of both new and existing homes. However, the study 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.

Consistent with previous studies by the Turner Center and others, the report found that fee transparency could be substantially improved. According to the study, many jurisdictions do not post their fee schedules or their nexus studies online, making it hard for developers to know their costs ahead of time. Meanwhile, other jurisdictions have adopted best practices, such as offering an estimate of the fees that a project would pay. The study recommended requiring local governments to post fees and nexus studies online, as well as annual reports on fee collections, and requiring jurisdictions to provide fee estimates.

The report also made additional findings and recommendations for substantive changes to mitigation fees, including:

- Requiring jurisdictions to consider different ways of imposing fees to lower the relative burden on multi-family units (e.g. on a per square foot basis instead of per unit);
- Determining fees earlier in the development process to reduce risk to developers;
- Reducing fees on accessory dwelling units;
- Limiting the level of service funded by fees to only existing levels of service; and
- Requiring consideration of effect on housing market in nexus studies.

To address transparency concerns, AB 1483 (Grayson, 2019) required cities and counties to post specified housing-related information on their web sites and requires HCD to establish a workgroup, as specified, to develop a strategy for state housing data.

AB 1483 required a city, county, or special district that has an internet website to post on their websites the following information, as applicable:

- A current schedule of mitigation fees, exactions, and affordability requirements imposed by the city, county, or special district, including any dependent special districts of the city or county, applicable to a housing development project, in a manner that clearly identifies the fees that apply to each parcel.
- All zoning ordinances and development standards, including which standards apply to each parcel.
- A list that cities and counties must develop under existing law of projects located within military use airspace or low-level flight path.
- The current and five previous annual fee reports or the current and five previous annual financial reports that local agencies must compile under to existing law.
- An archive of impact fee nexus studies, cost of service studies, or equivalent, conducted by the city, county, or special district on or after January 1, 2018.

A city, county, or special district must update this information on their website within 30 days of any change. The bill also defines “exaction” to mean:

- A construction excise tax.
- A requirement that the housing development project provide public art or an in-lieu payment.
- Mello-Roos taxes on new housing units.
- Dedications of parkland or in-lieu fees imposed pursuant to the Quimby Act (which governs the exactions local governments may require for parkland).

In November 2020, the Turner Center released a report focused on the preparation of nexus studies. The study found that in many cases, nexus studies do not clearly identify the current level of service and do not always use methodologies that tie fees closely to direct impacts of new development. Finally, the study noted that nexus studies and the fee setting process more broadly do not require a review of whether the fee would have negative financial consequences for housing development.

To address these findings, the report made the following recommendations:

- The state should set standards for nexus studies requiring that the studies focus on maintaining existing service levels and clearly reporting current service levels;
- Local agencies should use methodologies that more closely tie fees to direct impacts of new development; and
- Local agencies should incorporate consideration of feasibility into mechanisms for triggering review.

Based on the information gathered at the informational hearing and these studies, over the past couple years legislative staff has been meeting with multiple stakeholder groups to assess how to improve the impact fee process.

The author wants to implement some of these recommendations to improve impact fee transparency.

### **Proposed Law**

Assembly Bill 602 requires local agencies to conduct nexus studies prior to adopting impact fees and adds to the information on impact fees local agencies must post on their website.

**Nexus studies.** AB 602 requires a city, county, or special district to conduct a nexus study prior to the adoption of an impact fee, which must follow certain standards and practices:

- When applicable, identify the existing level of service and proposed new level of service, explain the metric being used, and include a finding why the new level of service is necessary.
- In calculating the fee, it must be proportionate to the square footage of the proposed units, unless the local agency makes a finding that another standard is more appropriate. Local agencies can still establish different fees for different types of developments.
- Adopt a capital improvement plan in jurisdictions located in counties with over 250,000 residents.
- Studies must be adopted at a public hearing with at least 30 days' notice, and provide notice to members of the public that request it.
- Calculate fees using standards that comply with existing law, including, but not limited to, vehicle miles traveled.
- Studies must be updated every eight years, from the period beginning on January 1, 2022.

Nexus studies adopted after July 1, 2022, must consider targeting fees geographically. If the city, county, or special district does not target the fees geographically, it shall adopt a finding explaining why the adoption of geographically specific fees is not appropriate.

The measure allows a local agency to use the impact fee nexus study template the measure requires HCD to develop by January 1, 2024.

Under the measure, any member of the public can submit evidence that local agency findings are insufficient or the local agency failed to comply with requirements. The legislative body must consider any evidence and can change or adjust the fee if they deem necessary.

The measure provides that these provisions do not apply to the following:

- Water and sewer connection and capacity charges;
- School fees;
- Water, sewer, or electrical rates; or
- Mello-Roos or other taxes.



**Website information.** AB 602 requires every city, county, or special district that has a website to post a written fee schedule or a link directly to the written fee schedule on its internet website. Additionally, the measure requires cities and counties to request from a development proponent, upon issuance of a certificate of occupancy, the total amount of fees and exactions associated with the project. The city or county must post this information on its internet website, and update it at least twice per year, but is not responsible for its accuracy. The city or county may also include a disclaimer regarding the accuracy of the information.

### **State Revenue Impact**

No estimate.

### **Comments**

1. Purpose of the bill. According to the author, “Local jurisdictions levy development fees to pay for the services needed to support new housing and to offset the impacts of growth in a community. These fees can make up a substantial portion of the cost to build new housing in California cities. In a March 2018 report, UC Berkeley’s Turner Center for Housing Innovation found that development fees can amount to anywhere from 6 percent to 18 percent of the median price of a home depending on location. In order for impact fees to be legally valid, they must comply with the rules and regulations established by the Mitigation Fee Act and be justified through the use of a ‘nexus study’ which illustrates the relationship between new development and its incremental impacts on infrastructure. In November of 2020, the Turner Center released a report which stressed the need for additional guidance on how local jurisdictions conduct nexus studies, which are currently governed by an opaque and informal patchwork of guidelines and common practices. AB 602 establishes basic transparency and accountability standards for nexus studies, and tasks the Department of Housing and Community Development (HCD) with developing a template for nexus studies that local governments can use.”

2. Sure, but will it work? The recent focus on mitigation fees in housing discussions relies on the premise that fees are too costly and that they are contributing to high home prices. There are several reasons to doubt this premise. First, developer fees are already limited by state statute and the federal constitution. They cannot exceed the reasonable cost of constructing the project or funding the service for which local agencies impose them. Local agencies must go through elaborate nexus studies to determine the impacts, and developers—or anyone else—can request an audit of the fees to ensure that they are reasonable. Additionally, Proposition 13 and the other ballot measures that followed have made it harder for local governments to spread the cost of infrastructure and services over the entire community: instead the cost burden is pushed onto new construction. Further limits on impact fees would further limit options for local agencies to provide core public services.

Importantly, AB 602 does not actually cap impact fees; it only adds steps some local agencies must take before imposing or changing fees. Some housing production advocates argue that a lack of transparency is an important factor limiting housing development. They cite the Turner Center’s report findings that fee and service levels for individual parcels are difficult to assess, as well as recommendations that the state set standards for preparing nexus studies. AB 602 makes several changes intended to increase transparency. First, it requires local agencies to post fee schedules. Also, it requires HCD to create a nexus study template that local agencies may use. Finally, it requires nexus studies to follow specified standards and practices, including updating

studies every eight years. The premise of AB 602 is that with this additional information, developers and housing advocates could (1) identify local agencies that cannot demonstrate that their impact fees are fair and reasonable, (2) identify local agencies that charge exorbitant amounts of impact fees, (3) help developers identify where they can build the most units while paying the lowest fee amounts, and (4) hold local agencies accountable for the fees they impose. On the other hand, local government groups argue that some agencies do not charge the maximum impact fee amounts that nexus studies show are reasonable, and regularly updating nexus studies could also justify increased fees. Additionally, increasing the requirements for local agencies to complete nexus studies, and completing those impact fees more regularly, would also increase local agency costs and workload. The Committee may wish to consider whether AB 602 appropriately balances the need for impact fee transparency with the potential effects on local agencies.

3. Too far or not far enough? AB 602 does not extend its nexus study requirements to all housing development costs. Importantly, the bill's nexus fee study requirements exempt (1) water and sewer connection and capacity charges; (2) school fees; and (3) Mello-Roos or other taxes. Some housing production advocates argue AB 602 does not go far enough in providing a complete picture of housing development costs in California. On the other hand, local agencies caution that these exempted fees are not the same as impact fees, have other accountability measures (including voter approval in the case of Mello-Roos taxes), and are not calculated in the same way as AB 602 requires. The Committee may wish to consider whether the AB 602 provides the appropriate level of information on housing development costs to assess their relationship to housing production.

4. Let's be clear. The Committee may wish to consider the following clarifying amendments to AB 602 to ensure that the author's intent is accurately carried out:

- AB 602 requires that local agencies request from developers the total amount of fees and exactions associated with projects upon issuance of a certificate of occupancy. Some counties report that residential projects do not get certificates of occupancy, only commercial projects do. However, all projects receive a final inspection. The Committee may wish to consider amending AB 602 to require local agencies to request this information upon the final inspection or issuance of a certificate of occupancy, whichever occurs last.
- AB 602 requires that nexus studies adopted after July 1, 2022, must consider targeting fees geographically and, if the agency does not target fees geographically, the local agency must adopt findings explaining why geographically targeting is not appropriate. According to the author, since geographic targeting of fees is already permissible, this requirement is unnecessary. The Committee may wish to consider amending AB 602 to remove this requirement.
- AB 602 provides that it does not require any study or analysis as a prerequisite to impose any water or sewer connection or capacity charges. To more clearly exempt these charges from AB 602's requirements, the Committee may wish to consider amending the bill to clearly say that it does not apply to these charges.

5. Related legislation. Earlier this year, the Committee approved SB 319 (Melendez, 2021), which requires a local agency who does not submit their impact fee annual reports for three

consecutive years to audit each consecutive year the local agency did not submit its annual report. The bill is currently pending on the Assembly Floor.

6. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because AB 602 imposes new duties on local officials, Legislative Counsel says that it imposes a new state mandate. But AB 602 disclaims the state's responsibility for providing reimbursement by citing local governments' authority to charge for the costs of implementing the bill's provisions.

7. Charter city. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. AB 602 says that its statutory provisions apply to charter cities. To support this assertion, the bill includes a legislative finding that ensuring access to adequate housing is a matter of statewide concern.

8. Coming and going. The Senate Rules Committee ordered a double-referral of AB 602: first to the Committee on Governance and Finance to consider its impact on local governments and second to the Committee on Housing to consider its impacts on housing.

**Assembly Actions**

Assembly Local Government Committee:	8-0
Assembly Housing and Community Development Committee:	7-0
Assembly Appropriations Committee:	16-0
Assembly Floor:	76-0

**Support and Opposition** (6/28/21)

Support: Bay Area Council; California Association of Realtors; California Yimby; Casita Coalition; Cbia; Council of Infill Builders; Greenbelt Alliance; Habitat for Humanity California; Hello Housing; Housing Action Coalition; Lisc San Diego; Spur; Sv@home; The Two Hundred; Tmg Partners

Opposition: American Planning Association California Chapter; California State Association of Counties; Fremont, City of; League of California Cities; Rural County Representatives of California; Urban Counties of California

-- END --



AGENCY: City Council  
MEETING DATE: September 09, 2019  
DEPARTMENT: Finance  
PRESENTED BY: Victor Damiani  
EMAIL ADDRESS: [vdamiani@fortbragg.com](mailto:vdamiani@fortbragg.com)

## AGENDA ITEM SUMMARY

### **TITLE:**

**Accept Development Impact Fees Reports for Fiscal Year Ending June 30, 2016, Fiscal Year Ending June 30, 2017 and Fiscal Year Ending June 30, 2018 and Adopt City Council Resolutions Making Additional Required Findings**

### **ISSUE:**

In order to comply with the California Government Code Subsection 66006(b)(1), the City must report annually on amount of the Developer Impact Fees, the beginning and ending balances in the account and any interest earned. The reports are due within one hundred eighty days of the close of the fiscal year. Council must review the information at a regularly scheduled public meeting not less than 15 days after the information is made available.

The required reports were first made available to the Council and Public on Wednesday, August 7, 2019.

### **ANALYSIS:**

The Mitigation Fee Act, California Government Code Section 66000 *et seq.* authorizes the City of Fort Bragg (City) to impose, collect and expend mitigation fees to offset the impacts of development within the City. The City currently collects four impact fees:

1. General Plan Maintenance Fees
2. Parking-In-Lieu Fees (currently subject to a moratorium through December 31, 2019)
3. Water Capacity Fees
4. Sewer Capacity Fees

There is no evidence that the reports have been prepared or that the reports and findings were completed in the recent past. To correct this oversight, the Finance Department staff has prepared the attached reports for the last three years.

Cities that levy and collect fees have certain annual reporting requirements and if unspent balances remain after five years, the City must make certain findings regarding the fees at five years and every five years, thereafter.

For each of the four impact fees listed above the Council is required to find the following:

1. Identify the purpose to which the fee is to be put.
2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.
3. Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in (1) above.

- Designate the approximate dates on which the funding referred to in (3) above is expected to be deposited into the appropriate account or fund.

**RECOMMENDED ACTION:**

Adopt resolutions accepting the Development Impact Fees Reports and making required findings.

**ALTERNATIVE ACTION(S):**

Direct staff to suspend one or more of the Development Impact Fees.

**FISCAL IMPACT:**

The reports provide the financial status of the Development Impact Fees levied by the City. The balances in those funds as of June 30, 2018 are set forth below:

	<b>Balance</b>
<b>Development Impact Fee</b>	<b>06/30/2018</b>
General Plan Maintenance	\$ 229,173
Parking-In-Lieu	\$ 32,338
Water Capacity	\$ 164,300
Wastewater Capacity	\$ 319,572

**CONSISTENCY:**

The Reports are consistent with California Government Code Subsection 66006(b)(1).

**IMPLEMENTATION/TIMEFRAMES:**

Immediately upon adoption.

**ATTACHMENTS:**

- RESO Development Fee Findings - General Plan
- RESO Development Fee Findings - Parking In-Lieu
- RESO Development Fee Findings - Wastewater Capacity
- RESO Development Fee Findings - Water Capacity
- General Plan Maintenance Fees 15-16
- Attachment A 15-16
- General Plan Maintenance Fees 16-17
- Attachment A 16-17
- General Plan Maintenance Fees 17-18
- Attachment A 17-18
- Parking In-Lieu Fees 15-16
- Parking In-Lieu Fees 16-17
- Parking In-Lieu Fees 17-18
- Wastewater Capacity Fees 15-16
- Wastewater Capacity Fees 16-17
- Wastewater Capacity Fees 17-18
- Water Capacity Fees 15-16
- Water Capacity Fees 16-17
- Water Capacity Fees 17-18

**NOTIFICATION:**

N/A

## **RESOLUTION NO. 4203-2019**

### **RESOLUTION OF THE FORT BRAGG CITY COUNCIL TO RECEIVE AND FILE THE 2017/18 WATER CAPACITY FEE DEVELOPMENT IMPACT FEE REPORTS AND MAKE CERTAIN FINDINGS, AS REQUIRED BY CALIFORNIA GOVERNMENT CODE SECTION 66006(b) AND CALIFORNIA GOVERNMENT CODE SECTION 66001(d)**

**WHEREAS**, the Mitigation Fee Act, California Government Code Section 66000 *et seq.* authorizes the City of Fort Bragg (City) to impose, collect and expend mitigation fees to offset the impacts of development within the City; and

**WHEREAS**, the California Government Code Section 66006(b) requires that for each separate account or fund established for the collection and expenditure of Development Impact Fees, the City shall make available to the public within one hundred eighty (180) days after the last day of each fiscal year a report that includes the amount of the fee, the beginning and ending balance of the fee account or fund and the interest earned thereon; and

**WHEREAS**, the California Government Code Section 66001(d) provides that for the first fiscal year following the first deposit into the fund, and every five years thereafter, the City shall make findings with respect to the portion of the fund remaining unexpended, whether committed or uncommitted; and

**WHEREAS**, prior to the Fiscal Year ended June 30, 2016, the City complied with the requirements of California Government Code Section 66001(d) and Section 66006(b) through the annual submittal of the Comprehensive Annual Financial report, The Capital Improvement Program and Annual Operating Budgets; and

**WHEREAS**, California Government Code Section 66001(d) provides that such findings when required shall be made in connection with the public information required by California Government Code Section 66006(b); and

**WHEREAS**, California Government Code Section 66006(b)(2) requires that the City Council review the information made available to the public at a regularly scheduled public meeting not less than 15 days after the information is made available to the public; and

**WHEREAS**, based on all the evidence presented, the City Council finds as follows:

1. As of June 30, 2018, the Water Capacity Fees fund contained One Hundred Sixty-four Thousand Three Hundred Dollars (\$164,300).
2. The unexpended fees will be used to replace and upsize a water transmission pipe from the Water Treatment Plant to Cedar Street. The project is scheduled for FY2020/2021.
3. There is a reasonable relationship between the use of the unexpended Water Capacity Fees as described in paragraph 2 and the purpose of the Water Capacity Fee, which is for the planning, design, construction or support activities of facilities in existence at the time the charge is imposed or for new facilities to be constructed in the future that are of reasonable benefit to the person(s) being charged.

4. The current estimated cost of the updates outlined in paragraph 2, is approximately Two Hundred Six Thousand Dollars (\$206,000). The funding source will include the unexpended Water Capacity Fees and future Water Capacity Fees to be collected for these projects. Any additional financing required will be provided by the Water Enterprise Capital Reserve.
5. The Water Capacity Fees have and will be deposited into the Water Capacity Fees fund immediately upon collection, which is the appropriate fund to finance the projects outlined in paragraph 2. Water Enterprise Capital Reserve funding will be deposited into the project fund upon commencement of the project. The project is currently scheduled for FY 2020/2021.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Fort Bragg has reviewed and accepted the annual disclosure information made available to the public on August 7, 2019, which was presented to the City Council and attached to this Resolution as Exhibit A.

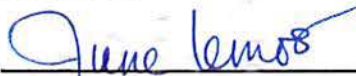
The above and foregoing Resolution was introduced by Councilmember Morsell- Haye, seconded by Councilmember Norvell, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 9<sup>th</sup> day of September, 2019, by the following vote:

**AYES:** Councilmembers Albin-Smith, Morsell- Haye, Norvell and Mayor Lee.  
**NOES:** None.  
**ABSENT:** Councilmember Peters.  
**ABSTAIN:** None.  
**RECUSED:** None.



\_\_\_\_\_  
**WILLIAM V. LEE**  
Mayor

**ATTEST:**



\_\_\_\_\_  
June Lemos, CMC  
City Clerk

City of Fort Bragg, California

Development Impact Fees Report  
Water Capacity Fees  
Fiscal Year Ended June 30, 2018



Prepared by City of Fort Bragg Finance Director  
Victor Damiani

EXHIBIT A



**City of Fort Bragg, California**  
**Development Impact Fees Report**  
**Water Capacity Fees**  
**Fiscal Year Ended June 30, 2018**

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For purpose of compliance with California Government Code Subsection 66006(b)(1), the following information regarding AB 1600 fees is presented in connection with the City's General Plan Maintenance fund:

*(A) A brief description of the type of fee in the account or fund.*

Capacity Fees - Capacity charges collected are used for the planning, design, construction or support activities of facilities in existence at the time the charge is imposed or for new facilities to be constructed in the future that are of reasonable benefit to the person(s) being charged.

*(B) The amount of the fee.*

<b>WATER CAPACITY CHARGE</b>	<b>\$</b>	<b>4,483.92</b>
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*(C) The beginning and ending balance of the account or fund. See statement below.*

*(D) The amount of the fees collected and the interest earned. See statement below.*

**Statement of Revenues, Expenditures, and Changes in Fund Balance**

	<u>FY 17-18</u>
<b>Revenues</b>	
Capacity Fees	\$ 19,537
Interest Income	2,262
<b>Total Revenues</b>	<b>\$ 21,799</b>
<b>Expenses</b>	-
<b>Total Expenses</b>	<b>\$ -</b>
<b>Other Financing Sources (Uses)</b>	
Transfers in	
Transfers out	35,000
<b>Total Other Financing Sources &amp; Uses</b>	<b>\$ (35,000)</b>
<b>Revenues Over (Under) Expenses</b>	<b>\$ (13,201)</b>
<b>Beginning Fund Balance as of 07/01/2017</b>	<b>\$ 177,501</b>
<b>Ending Fund Balance as of 06/30/2018</b>	<b>\$ 164,300</b>

**City of Fort Bragg, California**  
**Development Impact Fees Report**  
**Water Capacity Fees**  
**Fiscal Year Ended June 30, 2018**

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*(E) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.*

\$35,000.00 was expended to pay for the purchase of the Casey Subdivision water line. 94% of total costs were funded with fees.

*(F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.*

Cedar Street Water Distribution Line Project (in current CIP)

- Replace and upsize a water transmission pipe from the Water Treatment Plant to Cedar Street. This is included in the CIP with unidentified funding which can now be modified to water capacity fees.
- Estimated cost is \$206,000 and scheduled for FY 20/21.
- The project can be extended farther down Cedar Street as much as an additional 5,000 feet at \$200 - \$300/l.f. as additional funding can be secured, (about \$1,000,000 to \$1,500,000)

*(G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid and the rate of interest that the account or fund will receive on the loan.*

\$35,000.00 was transferred from the Water Enterprise Capacity Fees fund to the Water Enterprise Operating fund to pay for construction of the Casey Subdivision water line.

*(H) The amount of the refunds made pursuant to subdivision (e) of Section 66001 and any allocation pursuant to subdivision (f) of Section 66001.*

No refunds were made during the fiscal year.

## **RESOLUTION NO. 4203-2019**

### **RESOLUTION OF THE FORT BRAGG CITY COUNCIL TO RECEIVE AND FILE THE 2017/18 WATER CAPACITY FEE DEVELOPMENT IMPACT FEE REPORTS AND MAKE CERTAIN FINDINGS, AS REQUIRED BY CALIFORNIA GOVERNMENT CODE SECTION 66006(b) AND CALIFORNIA GOVERNMENT CODE SECTION 66001(d)**

**WHEREAS**, the Mitigation Fee Act, California Government Code Section 66000 *et seq.* authorizes the City of Fort Bragg (City) to impose, collect and expend mitigation fees to offset the impacts of development within the City; and

**WHEREAS**, the California Government Code Section 66006(b) requires that for each separate account or fund established for the collection and expenditure of Development Impact Fees, the City shall make available to the public within one hundred eighty (180) days after the last day of each fiscal year a report that includes the amount of the fee, the beginning and ending balance of the fee account or fund and the interest earned thereon; and

**WHEREAS**, the California Government Code Section 66001(d) provides that for the first fiscal year following the first deposit into the fund, and every five years thereafter, the City shall make findings with respect to the portion of the fund remaining unexpended, whether committed or uncommitted; and

**WHEREAS**, prior to the Fiscal Year ended June 30, 2016, the City complied with the requirements of California Government Code Section 66001(d) and Section 66006(b) through the annual submittal of the Comprehensive Annual Financial report, The Capital Improvement Program and Annual Operating Budgets; and

**WHEREAS**, California Government Code Section 66001(d) provides that such findings when required shall be made in connection with the public information required by California Government Code Section 66006(b); and

**WHEREAS**, California Government Code Section 66006(b)(2) requires that the City Council review the information made available to the public at a regularly scheduled public meeting not less than 15 days after the information is made available to the public; and

**WHEREAS**, based on all the evidence presented, the City Council finds as follows:

1. As of June 30, 2018, the Water Capacity Fees fund contained One Hundred Sixty-four Thousand Three Hundred Dollars (\$164,300).
2. The unexpended fees will be used to replace and upsize a water transmission pipe from the Water Treatment Plant to Cedar Street. The project is scheduled for FY2020/2021.
3. There is a reasonable relationship between the use of the unexpended Water Capacity Fees as described in paragraph 2 and the purpose of the Water Capacity Fee, which is for the planning, design, construction or support activities of facilities in existence at the time the charge is imposed or for new facilities to be constructed in the future that are of reasonable benefit to the person(s) being charged.

4. The current estimated cost of the updates outlined in paragraph 2, is approximately Two Hundred Six Thousand Dollars (\$206,000). The funding source will include the unexpended Water Capacity Fees and future Water Capacity Fees to be collected for these projects. Any additional financing required will be provided by the Water Enterprise Capital Reserve.
5. The Water Capacity Fees have and will be deposited into the Water Capacity Fees fund immediately upon collection, which is the appropriate fund to finance the projects outlined in paragraph 2. Water Enterprise Capital Reserve funding will be deposited into the project fund upon commencement of the project. The project is currently scheduled for FY 2020/2021.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Fort Bragg has reviewed and accepted the annual disclosure information made available to the public on August 7, 2019, which was presented to the City Council and attached to this Resolution as Exhibit A.

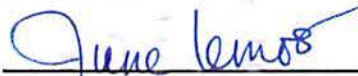
The above and foregoing Resolution was introduced by Councilmember Morsell- Haye, seconded by Councilmember Norvell, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 9<sup>th</sup> day of September, 2019, by the following vote:

**AYES:** Councilmembers Albin-Smith, Morsell- Haye, Norvell and Mayor Lee.  
**NOES:** None.  
**ABSENT:** Councilmember Peters.  
**ABSTAIN:** None.  
**RECUSED:** None.



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**WILLIAM V. LEE**  
Mayor

**ATTEST:**



\_\_\_\_\_  
June Lemos, CMC  
City Clerk

City of Fort Bragg, California

Development Impact Fees Report  
Water Capacity Fees  
Fiscal Year Ended June 30, 2018



Prepared by City of Fort Bragg Finance Director  
Victor Damiani

EXHIBIT A

**City of Fort Bragg, California**  
**Development Impact Fees Report**  
**Water Capacity Fees**  
**Fiscal Year Ended June 30, 2018**

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For purpose of compliance with California Government Code Subsection 66006(b)(1), the following information regarding AB 1600 fees is presented in connection with the City's General Plan Maintenance fund:

*(A) A brief description of the type of fee in the account or fund.*

Capacity Fees - Capacity charges collected are used for the planning, design, construction or support activities of facilities in existence at the time the charge is imposed or for new facilities to be constructed in the future that are of reasonable benefit to the person(s) being charged.

*(B) The amount of the fee.*

<b>WATER CAPACITY CHARGE</b>	<b>\$</b>	<b>4,483.92</b>
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*(C) The beginning and ending balance of the account or fund. See statement below.*

*(D) The amount of the fees collected and the interest earned. See statement below.*

**Statement of Revenues, Expenditures, and Changes in Fund Balance**

	<u>FY 17-18</u>
<b>Revenues</b>	
Capacity Fees	\$ 19,537
Interest Income	2,262
<b>Total Revenues</b>	<b>\$ 21,799</b>
<b>Expenses</b>	-
<b>Total Expenses</b>	<b>\$ -</b>
<b>Other Financing Sources (Uses)</b>	
Transfers in	
Transfers out	35,000
<b>Total Other Financing Sources &amp; Uses</b>	<b>\$ (35,000)</b>
<b>Revenues Over (Under) Expenses</b>	<b>\$ (13,201)</b>
<b>Beginning Fund Balance as of 07/01/2017</b>	<b>\$ 177,501</b>
<b>Ending Fund Balance as of 06/30/2018</b>	<b>\$ 164,300</b>

**City of Fort Bragg, California**  
**Development Impact Fees Report**  
**Water Capacity Fees**  
**Fiscal Year Ended June 30, 2018**

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*(E) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.*

\$35,000.00 was expended to pay for the purchase of the Casey Subdivision water line. 94% of total costs were funded with fees.

*(F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.*

Cedar Street Water Distribution Line Project (in current CIP)

- Replace and upsize a water transmission pipe from the Water Treatment Plant to Cedar Street. This is included in the CIP with unidentified funding which can now be modified to water capacity fees.
- Estimated cost is \$206,000 and scheduled for FY 20/21.
- The project can be extended farther down Cedar Street as much as an additional 5,000 feet at \$200 - \$300/l.f. as additional funding can be secured, (about \$1,000,000 to \$1,500,000)

*(G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid and the rate of interest that the account or fund will receive on the loan.*

\$35,000.00 was transferred from the Water Enterprise Capacity Fees fund to the Water Enterprise Operating fund to pay for construction of the Casey Subdivision water line.

*(H) The amount of the refunds made pursuant to subdivision (e) of Section 66001 and any allocation pursuant to subdivision (f) of Section 66001.*

No refunds were made during the fiscal year.