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DEPARTMENT OF
PUBLIC WORKS

OFFICE OF THE DIRECTOR

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CALIFORNIA

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APR 15 1987

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April 23, 1987

Law and Legislative Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: RECOMMENDATION TO OPPOSE SB 1407 (L. GREENE)
RELATING TO DEVELOPMENT FEES

SUMMARY

SB 1407 places numerous barriers in the way of cities which elect to impose requirements on developers to dedicate land, make improvements, or pay capital facilities fees. Sponsored by the California Building Industry Association, the bill is overly restrictive and administratively cumbersome. It is recommended that the Committee declare the City's opposition to SB 1407.

BACKGROUND

This legislation poses numerous and restrictive barriers to the imposition of development fees and conditions. The League of California Cities has identified four (4) major problems with SB 1407:

(1) The bill requires a 14-day notice period prior to imposing development-related exactions, which must include a plan for the use of the fee, dedication, or improvement, and requires a 60-day waiting period between imposition of the exaction and its use, unless the public agency determines that an emergency exists.

(2) The bill would allow the City to impose or increase a fee, dedication, or improvement requirement only if it makes one or both of the following findings supported by clear and convincing evidence:

A. The exaction is reasonable and necessary to mitigate a need directly attributable to the impact of the project; and/or

B. The exaction is reasonable and necessary to enable the City to directly provide the project with a public facility-related service and that service "...does not exceed the level of facility-related service provided by the (City) to existing development through resources other than development fees. (This is a very difficult standard to understand.)

Further, the bill eliminates any ability to deal with the cumulative effects of development by banning fees, dedications, or improvements based solely on consideration of general welfare or an indirect relationship between the exaction and the project.

(3) SB 1407 contains stringent accounting and reporting requirements, including a stipulation that the monies collected be kept in a separate fund and that each local agency provide an annual report that "clearly describes" the income and expenditures from the account. If the City cannot prove that the conditions which led to the imposition of the exaction still exist, the bill would require the City to stop levying the fee immediately.

(4) The bill would preclude the City from imposing an exaction to provide a public facility or service which the City would not ordinarily provide through resources other than development fees.

A number of bills seeking to address the issue of development fees have been introduced this session, and SB 1407 is by far the worst. The Assembly Local Government Committee held interim hearings on development fees last fall and has produced AB 1600 (Cortese), which attempts to provide a more balanced approach to the perceived problem. The League of California Cities, the County Supervisors Association of California, and other associations are reviewing these bills and working toward an acceptable compromise. Meanwhile, SB 1407 has been likened to the development community "shooting itself in the foot" by imposing restrictions so inflexible that anti-growth impacts may result.

SB 1407 is an example of the type of onerous and limiting State legislation the City has consistently opposed.

Page 3
Law and Legislative Committee
April 23, 1987

RECOMMENDATION

It is recommended that the Committee declare the City's opposition to SB 1407 (L. Greene) relating to development fees and exactions.

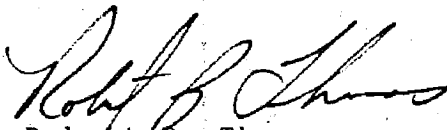
Respectfully submitted,



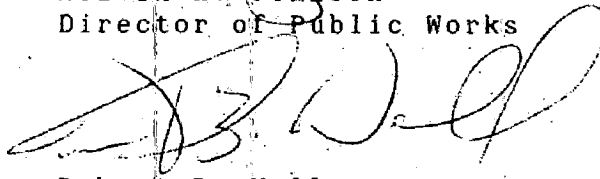
Betty Masuoka
Director of Finance



Melvin H. Johnson
Director of Public Works

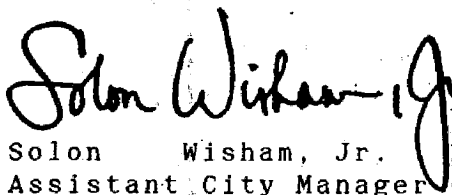


Robert P. Thomas
Director of Parks and
Community Services



Robert B. Wall
Assistant Director of
Planning and Development

APPROVED:



Solon Wisham, Jr.
Assistant City Manager

April 23, 1987
All Districts

B I L L R E F E R R A L

DATE: April 10, 1987

COMMITTEE ACTION: _____

TO: Law and Legislative Committee

DATE: _____

FROM: Public Works

REPLY NO LATER THAN:

A.B. S.B. 140.7 (Greene) Relating to Local Impact Fees

STATUS: Set for hearing in Senate Local Government Committee
May 6, 1987

Please review the attached measure to determine its effect upon the City of Sacramento and complete the following questions as appropriate. During your analysis of this measure, if questions arise, please feel free to contact me at X5346. This questionnaire should be returned to me for presentation to the Council Committee on Law and Legislation. PLEASE LEAVE THE BILL ATTACHED TO THIS FORM.

PLEASE TYPE YOUR RESPONSE

1. Briefly describe the provisions of the bill (attach additional sheets if necessary).
SB1407 would specify a required procedure for the imposition of development fees. The bill calls for certain noticing requirements, requires the City to make numerous findings before imposing such fees, and would prohibit enactment of impact fees based on "general welfare" or on an indirect relationship between the impact fee and the project.

2. Should this measure be: (Please circle desired position)
Supported Opposed Supported if Amended
Placed on Watch List Other (explain)

3. Please explain your reasons for the above determination, including how this measure affects your Department and the fiscal impact of this measure to the City. (Your analysis will be used in communicating with the Governor and the Legislature, so please make your comments in a format that can be used in a letter to those officials.) (Attach additional sheets if necessary.)

See attached analysis prepared by the League of California Cities.

4. Specify the City's legislative policy guideline(s) applicable to this measure (if any).

7.6(a) Permits a City the flexibility of choosing between sources of revenue and using that combination of sources which best meet the situation of the individual City from an economical, political and practical standpoint.

5. If this measure could be amended to either improve its favorable aspects or to minimize its adverse aspects, which amendments would you propose?

6. List known support or opposition to this measure by groups with which you are familiar and include addresses and phone numbers, if known. League of California Cities position:

OPPOSE

California Building Industry Association: Support (Sponsor)

7. Does this bill involve a State-mandated local program? If so, does the bill contain an S.B. 90 waiver, or an appropriation for allocation and disbursement to local agencies pursuant to Revenue and Taxation Code Section 2231?

Yes, SB1407 contains a \$500,000 appropriation.

8. Using a rating scale of 1 to 10 (with 10 as the most important), how important do you think this bill is to the City of Sacramento?

10

SB 1407, sponsored by the California Building Industry Association, places numerous barriers in the way of cities which wish to impose requirements on developers to dedicate land, make improvements, or pay infrastructure impact fees.

First, the bill requires a 14-day notice prior to imposing the exaction, which must include a plan for the use of the fee, dedication or improvement, and a 60-day waiting period between the time the fee, dedication, or improvement is required and the time it may be imposed on a development, unless a public agency determines an emergency exists. This would be nearly impossible for fees and dedications imposed only on a specific development to mitigate a specific problem.

Second, the bill allows the public agency to impose or increase a fee, dedication, or improvement requirement only if it makes one or both of the following findings supported by clear and convincing evidence (nearly as much evidence as is required for a criminal conviction): (1) the fee, dedication or improvement is a reasonable and necessary method to mitigate an identified public facility need directly attributable to the impact of the project; and/or (2) the fee, dedication or improvement is a reasonable mitigation and necessary to enable the agency to directly provide the project a public-facility-related service and the service does "not exceed the level of facility-related service provided by the local agency to existing development through resources other than development fees," clearly an impossible standard to understand. And if that isn't enough, to make cities completely unable to deal with cumulative development impacts, the bill specifically bans fees, dedications or improvements based solely on considerations of general welfare or an indirect relationship between the exaction and the project.

Third, the bill contains the following accounting and reporting requirements: (1) keeping the monies in a separate fund; (2) providing an annual report that "clearly describes" the income and expenditures from the account and how they were used to mitigate the conditions that caused the fee to be imposed; (e) "if the continued existence of the conditions which led to imposition of the impact fees cannot be clearly established, the local agency shall cease levying the fee immediately."

Finally, the bill precludes a city from imposing a fee, dedication or exaction to provide a "public facility or related service which the local agency would not otherwise provide through resources other than impact fees."

The crippling problems this bill would cause are apparent. That the building community is shooting itself in the foot with this bill is also obvious. The enactment of overly restrictive legislation such as SB 1407 would provoke opposition to development projects which are not supported by adequate public infrastructure.

SB 1407 has been referred to the Senate Local Government Committee. City officials should immediately contact Committee members to inform them of the practical no-growth impacts that will result from this bill. The members are: Marian Bergeson, Chair; Rose Ann Vuich, Vice Chair; Ayala, Craven, Kopp, Presley, Russell.

Introduced by Senator Leroy Greene

March 6, 1987

An act to add Section 65963 to the Government Code, relating to fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1407, as introduced, L. Greene. Local impact fees.

(1) Existing law contains various limitations on local governmental fees and other exactions imposed in connection with the approval of development projects.

This bill would specify a required procedure for the enactment by cities, counties, and districts of defined impact fees. Additionally, the bill would impose a state-mandated local program by requiring local agencies to account for, and report on, impact fees, as specified. The bill would require local agencies to stop levying an impact fee if the conditions underlying the fee cease to exist. The bill would require local agencies to make prescribed findings in enacting impact fees and would prohibit the enactment of impact fees based solely on general welfare considerations or based on an indirect relationship between the impact fee and the development project.

(2) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$500,000 statewide and other procedures for claims whose statewide costs exceed \$500,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide

cost does not exceed \$500,000, shall be made from the State Mandates Claims Fund.

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

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

1 SECTION 1. Section 65963 is added to the
2 Government Code, to read:

3 65963. (a) Unless expressly authorized by statute, no
4 local agency shall impose any impact fee as a condition of
5 approval of any development project unless the impact
6 fee is enacted as follows:

7 (1) The impact fee shall be enacted in accordance
8 with the procedures specified in Sections 54986, 54992,
9 and 65962.

10 (2) Prior to imposing or increasing impact fees, the
11 governing body of the local agency shall make either or
12 both of the following findings supported by clear and
13 convincing evidence:

14 (A) The proposed impact fees are a reasonable and
15 necessary method to mitigate an identified public facility
16 need directly attributable to the impact of the proposed
17 development project.

18 (B) The proposed impact fees are a reasonable
19 mitigation method and are necessary to enable the local
20 agency to directly provide to the development project a
21 public-facility-related service and the service does not
22 exceed the level of facility-related service provided by
23 the local agency to existing development through
24 resources other than impact fees.

25 (b) As part of the notice required pursuant to Sections
26 54986 and 54992, the governing body of the local agency
27 shall submit a plan for the use of impact fees. The plan
28 shall identify the facilities needed to mitigate the impact
29 of new development projects, when the facilities shall be
30 provided, and where the facilities shall be provided.

31 (c) Impact fees shall be subject to the following
32 accounting and reporting requirements:

33 (1) The local agency shall maintain a separate fund

1 into which shall be placed all impact fees paid and any
2 interest that accrues thereon.

3 (2) The local agency shall provide an annual report
4 which clearly describes the income, expenditures, and
5 balance of the impact fee account at the end of the
6 previous fiscal year. The report shall describe
7 expenditures made from the fund and how these
8 expenditures have been used to mitigate the conditions
9 which caused the imposition of the impact fee.

10 (3) If the continued existence of the conditions which
11 led to the imposition of the impact fees cannot be clearly
12 established, the local agency shall cease levying the fee
13 immediately.

14 (4) The report and review of conditions shall occur as
15 an agenda item at a regularly noticed meeting of the
16 governing body.

17 (d) Unless expressly authorized by statute, no local
18 agency shall enact an impact fee to provide a type of
19 public facility or related service which the local agency
20 would not otherwise provide through resources other
21 than impact fees.

22 (e) In no instance shall an impact fee be enacted by a
23 local agency based solely upon considerations of general
24 welfare or based upon an indirect relationship between
25 the impact fee and development project.

26 (f) As used in this section:

27 (1) "Development project" means any project
28 undertaken for the purpose of development as defined in
29 Section 65927, and which requires authorization by a local
30 agency.

31 (2) "Impact fee" means an exaction or dedication of
32 land or improvements, the in-lieu payment of money or
33 the conveyance of any property, real or personal, to a
34 local agency as a condition of the approval of a
35 development project by a local agency. However,
36 "impact fee" does not include local agency fees or
37 charges authorized in accordance with Section 54990.

38 (3) "Local agency" means a city, whether chartered or
39 general law, county, city and county, and special district.