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Mitigation Fee Act – Recent Mandates

OVERVIEW OF NEW REGULATIONS IMPACTING MITIGATION FEES

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Two New Laws

- Recent legislation reflects increasing state focus on facilitating housing—particularly affordable housing—by modifying when fees may be collected and what information must be disclosed to developers.

- **Senate Bill 937** primarily addresses **timing and deferral** of fee collection,

- **Assembly Bill 1820** focuses on **transparency and predictability** of development fees.

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SB 937 – Utility User Fees

- Prior to SB 937, the Mitigation Fee Act generally prohibited collection of development impact fees for residential projects until final inspection or issuance of a certificate of occupancy.

- An exception allowed local agencies to collect utility service fees earlier, at the time an application for service was submitted.

- SB 937 narrows this exception so it applies **only** to utility connection fees (e.g., water and sewer connection charges), excluding broader service or capacity fees.

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SB 937 – Utility User Fees

- The law also caps utility connection fees at the **actual costs incurred** by the utility provider as a result of the connection activity.
- These changes reduce upfront costs for residential developers and limit local discretion to front-load utility-related fees.

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SB 937 – Affordable Housing Projects

- The Mitigation Fee Act authorizes the local agency to collect certain fees prior to the final inspection or the date the certificate of occupancy is issued in specified instances.
- These exceptions are when:
  - (1) the fees are being charged to reimburse the local agency for expenditures already incurred, if they have not been reimbursed already;
  - (2) the fees are for specific public improvements funded by an account specifically for those improvements, such as waste, sewer, transportation improvements, school facilities, and emergency services.
- Currently, units in a residential development project proposed by a nonprofit housing developer are exempt from paying the fees earlier if the housing development meets certain conditions.
- SB 937 extends this exemption for residential development units proposed by a nonprofit housing developer to residential development units proposed by all housing developers that meet certain conditions

SB 937 – Designated Residential Development Projects

- SB 937 establishes a category of "Designated Residential Development Projects," and then allows for deferral of fee payments for development projects that fit into this category.
- There are several criteria for being considered a "designated residential development project" as per SB 937. The project must be one of the following:
  - Projects that designate 100% of units as low-income housing. (Cal. Gov. Code § 66007(c)(4)(A)).

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SB 937 – Designated Residential Development Projects

- Projects that serve as Low Barrier Navigation Centers (i.e., residential projects that offer temporary homeless housing and services to connect people to permanent housing). (Cal. Gov. Code § 66007(c)(4)(B)).
- Projects approved pursuant to Assembly Bill (AB) 2011, as amended by AB 2243 (effective January 1, 2025). AB 2011 provides for "by right" streamlined ministerial (i.e., no CEQA) approval of qualifying mixed-income and affordable housing development projects without the need for rezoning. In exchange, specified affordable housing and labor requirements must be met.
- Projects that meet the SB 35 requirements under Gov. Code § 65913.4(a). Such projects must include affordable housing units, and construction workers must be paid prevailing wages, as specified. (Cal. Gov. Code § 66007(c)(4)(D)).

SB 937 – Designated Residential Development Projects

- Projects that meet the criteria of Gov. Code § 65913.16(c) (Affordable Housing on Faith and Higher Education Lands Act of 2023), which provides for streamlined review of qualifying residential developments on land owned by a higher education or religious institution, as specified. (Cal. Gov. Code § 66007(c)(4)(E-F)).
- Projects are entitled to a density bonus pursuant to Gov. Code § 65915(b), meaning that a specified percentage of affordable units are provided on-site. (Cal. Gov. Code § 66007(c)(4)(G)).
- Projects that include 10 or fewer dwelling units. (Cal. Gov. Code § 66007(c)(4)(H)).

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SB 937 – Designated Residential Development Projects

- Local agencies may not charge interest on deferred development impact fees for Designated Residential Development Projects, keeping the total fee amount unchanged.

- When earlier payment is authorized for Designated Residential Development Projects, developers may secure payment through performance bonds or letters of credit instead of immediate cash payment.

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SB 937 – Contracts

- Local agencies may require a fee payment contract as a condition of building permit issuance when fees are deferred.
- Agencies must post a model fee deferral contract online and may authorize staff-level approval of these agreements, increasing administrative efficiency but also oversight obligations.

AB 1820 – Fee Transparency, Estimates, and Disclosure Requirements

- Upon request following a preliminary housing application, cities and counties must provide a **preliminary fee and exaction estimate** within 30 business days.

- After final project approval, an itemized list and **good-faith estimate** of all applicable fees and exactions must be provided within 30 business days.

- Fee estimates are explicitly informational only and are not legally binding or determinative of final fee amounts or timing.

- AB 1820 also expands website disclosure requirements and clarifies that developers are not obligated to respond to agency requests for final fee reporting at certificate of occupancy. developers.

Questions?
Concerns?
Discussion