

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2553 (Friedman) – As Introduced February 14, 2024

SUBJECT: Housing development: major transit stops: vehicular traffic impact fees

SUMMARY: Expands the geographic scope of a housing development eligible for reduced vehicular traffic impact fees. Specifically, **this bill:**

- 1) Changes, for the purposes of existing law governing reduced vehicular traffic impact fees, “transit station” to “major transit stop”.
- 2) Defines, for the purposes of a local agency imposing vehicular traffic impact fees, “major transit stop” to mean
 - a) An existing rail or bus rapid transit station.
 - b) A ferry terminal served by either a bus or rail transit service.
 - c) The intersection of two or more major bus routes with a frequency of service interval of 20 minutes or less during the morning and afternoon peak commute period.
 - d) A site in an urbanized area that is served by an on-demand transit service at least 12 hours each day, seven days per week.
 - e) Major transit stops that are included in the applicable regional transportation plan and are programmed to be completed prior to the scheduled completion and occupancy of the housing development.
- 3) Redefines “major transit stop”, for the purposes of the California Environmental Quality Act (CEQA) and any cross references, to include
 - a) The intersection of two or more major bus routes with a frequency of service interval of 20 minutes or less during the morning and afternoon peak commute periods.
 - b) Sites in an urbanized area served by an on-demand transit service at least 12 hours a day, seven days per week to the definition of “major transit stop.”
- 4) Provides that no reimbursement is required by this bill 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 bill, as specified.

EXISTING LAW:

- 1) Requires a local agency to impose fees related to vehicular impacts at a rate that reflects a lower rate of automobile trips associated with housing development with all of the following characteristics [Government Code (GOV) § 66005.1]:

- a) The housing development is located within one-half mile of a transit station and there is direct access between the housing development and the transit station along a barrier-free walkable pathway not exceeding one-half mile in length.
 - b) Convenience retail uses, including a store that sells food, are located within one-half mile of the housing development.
 - c) The housing development provides the minimum number of parking space required by the local ordinance or no more than one onsite parking space for zero to two bedroom units, and two onsite parking spaces for three or more bedroom units, whichever is less.
- 2) Defines, for the purposes of 1), above, “housing development” to mean a development project with common ownership and financing consisting of residential use or mixed use where not less than 50 percent of the floorspace is for residential use. (GOV § 66005.1)
 - 3) Defines, for the purposes of 1) above, “transit station” to mean a rail or light-rail station, bus hub, or bus transfer station. (GOV § 65460.1)
 - 4) Defines “major transit stop” which means a site containing an existing rail or bus rapid transit station, ferry terminal served by either bus or rail transit, or the intersection of two or more major bus routes with a frequency of service of 15 minutes or less during the morning and afternoon peak commute periods. [Public Resources Code (PRC) § 21064.3]

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Bill Summary.** AB 2533, for the purposes of the CEQA, defines “major transit stop” to mean an existing rail or bus rapid transit station, a ferry terminal served by either a bus or rail transit, intersection of two or more major bus routes with a frequency of 20 minutes or less, or a site that is served by an on-demand transit service. For purposes of calculating reduced traffic impact fees imposed on a housing development, the bill replaces “major transit station” with “major transit stop” and adds a planned major transit stop included in a regional transportation plan that will be completed prior to completion of the housing development.
- 2) **Author Statement.** According to the author, “Many local agencies have very high traffic impact fees, posing an impediment to the production of housing and over-charging transit proximate housing developments that would have minimal traffic impacts.”

“Furthermore, the COVID-19 pandemic caused a significant reduction in transit ridership. Many transit agencies responded by cutting routes and reducing service frequency. As a result, there are fewer locations that meet the definition of major transit stop. Notwithstanding service reductions, development projects proximate to existing and planned transit generate fewer vehicle trips and have more transit riders than projects located further from transit with benefits to air quality and greenhouse gas emissions.”

“AB 2553 solves these problems by removing impediments to the production of transit proximate housing. AB 2553 clarifies when local jurisdictions must impose lower traffic impact fees on transit proximate housing developments and updates the definition of major

transit stop to reflect post-COVID service levels and on-demand transit.”

- 3) **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:

- 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; and
- d) 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 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 any proposed impact fees meet these legal tests for most impact fees. Other requirements in the Mitigation Fee Act ensure that impact fees are appropriately levied and spent, including that a local agency must:

- a) Hold at least one open and public meeting prior to levying a new fee or increasing an existing one;
- b) 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;
- c) Deposit and spend the fees within five years of collecting them; and
- d) 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.

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 information on the fee amounts, how they used the revenue, and any unspent funds.

- 4) **The Sustainable Communities and Climate Protection Act.** In 2008, the Legislature passed the Sustainable Communities and Climate Protection Act [SB 375 (Steinberg), Chapter 728, Statutes of 2008] which helped support California's climate goals coordinating transportation, housing, and land use planning to reduce greenhouse gas emissions. This law focuses on incentivizing regional and local planning and building in ways that bring people and destinations closer together, with low-carbon, alternative and convenient ways to get around. It requires regional metropolitan planning organizations in California to develop Sustainable Communities Strategies (SCS), or long-range plans, which align transportation, housing, and land use decisions toward achieving greenhouse gas (GHG) emissions reduction targets set by the California Air Resources Board (CARB).

According to CARB, some of the key aspects of SCS plans include a focus on housing and job growth within existing urbanized areas with access to high quality transit and active transportation options. By creating flexibility on impact fees related to vehicular traffic, local governments can incentivize development around transit service and reduced GHG emissions.

- 5) **AB 3005 Reduced Fees for Transit Oriented Development.** This bill required a local agency to impose a fee for the purpose of mitigating vehicular traffic impacts on a housing development located near a transit station and meeting other characteristics, such as having limited parking and being near a store that sells food, the fee must be established at a rate that reflects reduced automobile trip generation associated with such developments. The local agency does not have to charge a reduced fee if it makes findings that the development would not reduce automobile trip generation.
- 6) **Policy Considerations.** AB 2553 requires a local government to include urban sites that are serviced by on-demand transit to be included as part of the areas considered for lower rates of vehicular traffic impact fees. "On-demand transit service" is undefined in existing law and could be interpreted broadly to mean anything from ADA paratransit services to public-private partnerships between transit agencies and Uber and Lyft. Reduced transit impact fees creates incentive to build more densely along major transit stops and transit corridors, on-demand transit may undermine that goal by providing this incentive to projects that are not within half a mile of transit stops. The Committee may wish to consider the impacts of including on-demand transit on the State's goals of building greater density housing projects along transit stops and corridors.
- 7) **Committee Amendments.** In response to the policy consideration outlined above, the committee may wish to consider striking subdivision (d) of Section 2 of the bill.
- 8) **Related Legislation.** AB 3177 (W. Carrillo) Prohibits a local agency from imposing a land dedication requirement on a housing development within a transit priority area for the purpose of mitigating vehicular traffic impacts or achieving an adopted level of service related to vehicular traffic and makes related changes. This bill is pending in the Assembly Committee on Housing and Community Development.

- 9) **Previous Legislation.** SB 1925 (Sher), Chapter 1039, Statutes of 2002, defines “major transit stop” means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods

SB 375 (Steinberg), Chapter 728, Statutes of 2008, requires metropolitan planning organizations to include sustainable community strategies, as defined, in their regional transportation plans for the purpose of reducing greenhouse gas emissions, aligns planning for transportation and housing, and creates specified incentives for the implementation of the strategies.

AB 3005 (Jones), Chapter 692, Statutes of 2008, established that when a local agency imposes a fee on a housing development for the purpose of mitigating vehicular traffic impacts, the local agency shall set the fee at a lower rate for housing developments within one-half mile of a transit station, one-half mile of a convenience retail that sells food, and the housing development provides minimum number of parking spaces required by local ordinance.

AB 1560 (Friedman), Chapter 631, Statutes of 2019, defined “bus rapid transit” and restructured the definition of “major transit stop”.

- 10) **Arguments in Support.** Abundant Housing Los Angeles writes in support, “As of now, if a local agency has adopted a traffic impact fee, the Mitigation Fee Act would make sure the fee is set at a lower rate for housing development projects that reduce vehicle trips and miles traveled. As the current law stands, it requires the housing development to be within one-half mile of a transit station, which is a definition that leaves out many projects that are near transit stops. Numerous local agencies have high traffic impact fees, which creates another hurdle in the production of housing and over-charging housing developments located near transit stops that would have minimum traffic impacts.”

“The California Environmental Quality Act and the State Density Bonus Law currently encourage development projects near transit stops. Written in these statutes, a development project must be proximate to a major transit stop, which under its current definition, means it includes the intersection of two or more major bus routes with a frequency of 15 minutes or less during morning and afternoon peak commute periods. However, after the pandemic, there have been significant cuts to ridership, which has translated into a reduction in bus routes and service frequency. Thus, many locations no longer meet the existing definition for a major transit stop.”

“In addition, public transit agencies are adopting policies that facilitate on-demand transit, which is an alternative to more traditional fixed route transit. The current definition excludes this new form of transit.”

- 11) **Arguments in Opposition.** None on file.
- 12) **Double-Referral.** This bill is double-referred to the Assembly Housing and Community Development Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Abundant Housing LA
Associated General Contractors
California Community Builders
California Yimby
Circulate San Diego
Civicwell
East Bay Yimby
Grow the Richmond
How to ADU
Leadingage California
Midpen Housing
Monterey Bay Economic Partnership
Mountain View Yimby
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
People for Housing Orange County
Progress Noe Valley
San Francisco Yimby
San Luis Obispo Yimby
Sand Hill Property Company
Santa Cruz Yimby
Santa Rosa Yimby
South Bay Yimby
Southside Forward
SPUR
Streets for All
Streets for People
Urban Environmentalists
Ventura County Yimby
Yimby Action

Opposition

None on file.

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