

April 23, 2024

The Honorable Scott Wiener  
Member, California State Senate  
1021 O Street, Room 8620  
Sacramento, CA 95814

**RE: SB 937 (Wiener) Development projects: permits and other entitlements: fees and charges. Notice of OPPOSE UNLESS AMENDED**

Dear Senator Wiener,

The City of San Marcos regrettably must oppose unless amended your measure SB 937 which would prohibit local agencies from collecting the payment of fees for the construction of public improvements or facilities until the development receives its certificate of occupancy.

Local governments and planners appreciate the need to provide builders with some level of certainty regarding the fees and other conditions applicable to their proposed development before they make substantial investments in pursuing the development. However, that certainty often comes with social costs. The roads, fire stations, water and sewer facilities, and other necessary assets that will serve future residents of the development - or to mitigate the development's environmental impacts - are not without cost. And these do not become less expensive as time goes on. "Freezing" development fees and related conditions for an extended period ultimately mean that the local government cannot recover the everincreasing costs of those facilities - which in turn means that construction of those facilities may be delayed, or never fully occur. These consequences must be balanced against the builders' certainty interests, to avoid creating unmitigated impacts or future underserved communities.

There are often years, or even decades, between the initial application for approval of the very first land use entitlement relating to a project and when a developer applies for issuance of building permits for a project. During this period, the costs of infrastructure and public services inevitably rise. This bill would prevent local governments from recovering those costs, thereby resulting in inadequate public facilities.

SB 937 counter-intuitively discourages speedy approval of housing developments. If the "freeze" commences with the very first development entitlement, conscientious local governments, who desire to fully fund and provide adequate public facilities and services, will be encouraged to defer that approval until the developer can provide positive assurances that the project will be completed without delay. Further, the inability to ensure that the applicable fees will produce sufficient funding to construct the necessary facilities within a reasonable timeframe may make it more difficult to rely on those fee mechanisms as mitigation for environmental impacts under CEQA - thereby encouraging legal challenges and consequent delays.

Additionally, SB 937 prohibits local agencies from posting a performance bond or a letter of credit from a federally insured, recognized depository institution to guarantee payment of any fees or charges with the proposed development project. This is concerning as local governments need to be able to guarantee that the collection of fees is allowed through a legally binding agreement. That means if a city starts construction on public improvement projects before final inspection, it will be much more difficult to enforce the developer's

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obligation to pay these fees and as a result, cause local governments to subsidize costly infrastructure upgrades necessary to promote public health and safety for residents within the community.

To improve the bill, the author should clarify in the language that a certificate of occupancy or another similar measure determines the time when local governments can collect permit fees as not all jurisdictions issue certificates of occupancy. Additionally, the author should remove the language prohibiting the local government's authority to require a bond or letter of credit if a housing development project does not pay fees until the final building inspection. We are very concerned by the inclusion of Quimby Act park land dedications within the Mitigation Fee Act, as well as the language that includes utility-related connection fees and capacity charges within Section 66077 of the bill, and urge the author to remove these provisions from the bill. Finally, while we understand the economic forces that have led to the delay of numerous housing projects, we are concerned by continued legislative efforts to extend expiring land use entitlements and urge the author to take a measured approach to this issue in SB 937, including by perhaps limiting applicability to 100% affordable housing projects. For these reasons, The City of San Marcos respectfully opposes SB 937.

Sincerely,

Rebecca D. Jones  
Mayor

CC: The Honorable Maria Elena Durazo, Chair, Senate Local Government Committee  
Members, Senate Local Government Committee  
Catherine Hill, League of California Cities – San Diego and Imperial Counties