



**CITY OF HUNTINGTON BEACH**  
2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648-2702

**GRACEY VAN DER MARK**  
**MAYOR**

July 3, 2024

The Honorable Nancy Skinner  
Chair, Senate Housing Committee  
1021 O Street, Suite 8630  
Sacramento, CA 95814

RE: AB 2553 (Friedman) Housing development: major transit stops: vehicular impact fees

Dear Senator Skinner,

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 broadly interpreted. Reduced transit impact fees create incentive to build more densely along major transit stops and transit corridors. And On-demand transit may undermine that goal by providing this incentive to projects that are not within half a mile of transit stops.

AB 2553 changes the definition of a "major transit stop" from including 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 to 20 minutes or less. However, the measure changes this definition not just for the purposes of determining which projects qualify for lower impact fees, but for any other state law that references this definition. For example, this would mean more projects would qualify for an exemption to CEQA because they would now fall under the definition of a transit priority project. Additionally, it would further limit a local agency's ability to impose parking requirements, since recent legislation (AB 2097, Friedman, 2022) prohibited public agencies from imposing or enforcing parking minimums on developments within ½ mile of a major transit stop. Finally, this change in definition would also affect recent housing laws including some that require streamlined approval of housing development project.

For these reasons, the City of Huntington Beach respectfully opposes AB 2553.

Sincerely,

Gracey Van Der Mark  
Mayor

Cc: Assemblymember Friedman  
Senator Janet Nguyen  
Assemblymember Diane Dixon

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# SENATE COMMITTEE ON LOCAL GOVERNMENT

Senator María Elena Durazo, Chair

2023 - 2024 Regular

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**Bill No:** AB 2553  
**Author:** Friedman  
**Version:** 4/15/24

**Hearing Date:** 6/11/24  
**Fiscal:** No  
**Consultant:** Peterson

## ***HOUSING DEVELOPMENT: MAJOR TRANSIT STOPS: VEHICULAR TRAFFIC IMPACT FEES***

*Requires cities and counties to set lower traffic impact mitigation fees for transit-oriented housing developments near major transit stops, instead of just at transit stations, and changes the definition of a major transit stop.*

### **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 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 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:

- Hold at least one open and public meeting prior to levying a new fee or increasing an existing one;
- If it decides 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.

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, broken up by each separate fund. The local agency must review this information at the next regularly scheduled public meeting at least 15 days from when it makes the information available to public. It must also provide notice to the public at least 15 days prior to the meeting.

***Impact fee audit requirements.*** Any person may request an independent audit of how the impact fees have been collected and spent, including an assessment of whether the fees exceed the amount reasonably necessary to cover the costs of the stated projects or services. If a person

makes that request, the local agency retains an independent auditor to conduct the audit, provided that an audit has not been performed on the same fee within the previous 12 months and the requestor deposits funds necessary to cover the estimated cost for the audit with the local agency. A local agency must adjust its fees if the audit finds that the fees are set too high.

***Traffic mitigation impact fees.*** Cities and counties must set lower traffic impact mitigation fees for specified transit-oriented housing developments unless the city or county makes a finding that the development will not generate fewer automobile trips than a non-transit oriented housing development (AB 3005, Jones, 2008). Specifically, this lower fee applies to housing developments that meet all of the following criteria:

- The development is located within one-half mile of a transit station, and have direct access to the transit station along a barrier-free walkable pathway;
- The development is located within one-half mile of convenience retail uses, including a store that sells food;
- At least 50 percent of the floor space of the development is for residential use; and
- The development provides either the minimum number of parking spaces required by the local ordinances, 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.

The lower fee must reflect the lower rate of automobile trip generation associated with such housing developments in comparison with housing developments without these characteristics. Under AB 3005, transit stations include any rail or light-rail station, ferry terminal, bus hub, or bus transfer station, including and any of these stations that are scheduled to be completed prior to the scheduled completion and occupancy of the housing development.

***Major transit stop.*** The California Environmental Quality Act (CEQA) requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration, mitigated declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA. CEQA exemptions expedite construction of a particular type of project and reduce costs by bypassing the process that other projects must go through. CEQA provides various exemptions, including for residential or mixed-use residential “transit priority projects,” if the project is consistent with the use designation, density, building intensity, and applicable policies specified for the project area in either an approved sustainable communities strategy or alternative planning strategy. To be a transit priority project, the project must be within one-half mile of a “major transit stop” and meet other requirements. Under CEQA, a major transit stop refers to any of the following:

- An existing rail or bus rapid 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.

The author wants to expand the projects that qualify for lower traffic impact mitigation fees.

### **Proposed Law**

Assembly Bill 2553 changes the requirement for cities and counties to set lower traffic impact mitigation fees for transit-oriented housing developments to apply to any major transit stops

scheduled to be completed before the housing development is completed, including major transit stops included in the applicable regional transportation plan.

The measure changes the definition of a major transit stop to refer to stops with frequency of service intervals of 20 minutes or less during the morning and afternoon peak commute periods, instead of 15 minutes.

### Comments

1. Purpose of the bill. 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.”

2. Winners and losers. AB 2553 expands the projects that qualify for lower traffic impact mitigation fees to include those near major transit stops instead of just transit stations. This would add 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. Currently, only projects near bus hubs or bus transfer stations qualify as transit stations. Additionally, the change would remove ferry terminals without bus or rail transit service. Altogether, these changes expand the projects that qualify for reduced traffic impact mitigation fees. This means local agencies will collect less revenue to make public improvements to mitigate the traffic impacts of additional development. This could mean the local agency makes fewer public improvements, or takes longer to complete them. Allowing lower fees on these projects could make it more likely they pencil out, but it will come at the cost of local government revenue.

3. The best intentions. AB 2553 allows projects near planned major transit stops whose construction is projected to be completed before the housing development to benefit from lower fees. However, the measure does not appear to apply the same requirement for a project to be projected to be completed before the housing development to major transit stops identified in a regional transportation plan. This is problematic because a proposed housing development near a planned stop will not generate fewer automobile trips if the station does not get built or is delayed. The Committee may wish to consider amending the bill to clarify that major transit stops in the applicable regional transportation plan also need to be scheduled to be completed prior to the scheduled completion and occupancy of the housing development to benefit from reduced vehicle mitigation impact fees.

4. Unintended consequences. AB 2553 changes the definition of a “major transit stop” from including 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 to 20 minutes or less. However, the measure changes this definition not just for the purposes of determining which projects qualify for lower impact fees, but for any other state law that references this definition. For example, this would mean more projects would qualify for an exemption to CEQA because they would now fall under the definition of a transit priority project. Additionally, it would further limit local agencies ability to impose parking requirements, since recent legislation (AB 2097, Friedman, 2022) prohibited public agencies from imposing or enforcing parking minimums on developments within ½ mile of a major transit stop. Finally, this change in definition would also affect recent housing laws including some that require streamlined approval of housing development project. To avoid unintended changes to other statutes, the Committee may wish to consider amending the bill to ensure that the change to the definition of a major transit stop only applies to vehicle mitigation impact fees.

5. Choppy waters ahead? The U.S. Supreme Court recently decided *Sheetz vs. County of El Dorado*. In this case, an El Dorado County resident challenged the county's legislatively enacted traffic impact mitigation fee arguing the county should only charge him based on the impact associated with his specific parcel. In other words, legislatively enacted fees should be subject to the same standards as ad hoc fees. The decision concluded that the federal constitution does not distinguish between legislatively enacted and ad hoc fees, and remanded the case back to the California Court of Appeals' Third District for a decision in line with its holding. Should the Committee consider Mitigation Fee Act legislation before the California Court of Appeals makes its final decision?

6. The song that never ends. The Legislature is considering several other pieces of legislation concerning the Mitigation Fee Act:

- SB 937 (Wiener, 2024), which this Committee approved on a 6-0 vote at its April 3<sup>rd</sup> hearing, makes various changes to the process for local agencies to collect development impact fees, and extends development entitlements. The measure is awaiting referral in the Assembly.
- SB 1210 (Skinner, 2024), which this Committee approved on a 5-2 vote at its April 17<sup>th</sup> hearing, requires electrical, gas, sewer, and water service utilities to post fee schedules and estimated timeframes for new service connections and capacity upgrades needed to connect new housing construction projects. The measure is awaiting referral in the Assembly.
- AB 1820 (Schiavo, 2024) requires a city or county to provide an estimate of fees and exactions for the project within 30 days of receiving a preliminary application for a housing development project upon a request from the project applicant for an estimate. The measure is also scheduled for this Committee's June 11<sup>th</sup> hearing.
- AB 2663 (Grayson, 2024) requires local agencies to post certain information regarding affordable housing impact fees on their websites. The measure is also scheduled for this Committee's June 11<sup>th</sup> hearing.
- AB 2729 (Joe Patterson, 2024) removes the requirement on local agencies that fees must be paid prior to the date of final inspection or issuance of the certificate of occupancy, whichever occurs first. The measure is also scheduled for this Committee's June 11<sup>th</sup> hearing.
- AB 3012 (Grayson, 2024) requires cities and counties to create a fee estimate tool that the public can use to calculate an estimate of fees and exactions for a proposed housing development project available on its internet website. It also requires the Department of

Housing and Community Development to create a fee schedule template, develop best practices for displaying fees, and gives the department the option to create a fee estimate tool. The measure is also scheduled for this Committee’s June 11<sup>th</sup> hearing.

- AB 3177 (W. Carrillo, 2024) prohibits land dedications for the purpose of mitigating vehicular traffic on housing developments. The measure is also scheduled for this Committee’s June 11<sup>th</sup> hearing.
- AB 3276 (Ramos, 2024) requires local agencies to post certain impact fee information on their websites by the end of the 2029-30 fiscal year for the previous five years, which it must do every five years thereafter. The measure is also scheduled for this Committee’s June 11<sup>th</sup> hearing.

7. Coming and going. The Senate Rules Committee has ordered a double referral of AB 2553: first to the Senate Local Government Committee to hear issues related to local government fee authority, and second to the Senate Housing Committee.

**Assembly Actions**

Assembly Local Government Committee:	9-0
Assembly Housing and Community Development Committee:	9-0
Assembly Floor:	73-0

**Support and Opposition** (6/7/24)

Support: Abundant Housing LA  
 Association of Environmental Professionals  
 California Community Builders  
 California Yimby  
 Circulate San Diego  
 Civicwell  
 East Bay Yimby  
 Grow the Richmond  
 Habitat for Humanity California  
 Leadingage California  
 Midpen Housing  
 Monterey Bay Economic Partnership  
 Mountain View Yimby  
 Napa-Solano for Everyone  
 Northern Neighbors  
 Peninsula for Everyone  
 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 People

Urban Environmentalists  
Ventura County Yimby  
Yimby Action

Opposition: None received.

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