CITIES ASSOCIATION
OF SANTA CLARA COUNTY

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August 16, 2024

The Honorable Scott Wiener
California State Capitol
1021 O Street
Sacramento, CA 95814

Re: SB 937 (Wiener): Development Projects: permits and other entitlements: fees and charges

Notice of Opposition unless amended

Dear Assembly Member Wiener:

We write today on behalf of the Cities Association of Santa Clara County (CASCC), a Joint Powers Authority, an association of fourteen cities of the county and the elected representatives of more than 1.8 million Bay-Area residents. Since 1990, the city representatives have been gathering to discuss and find consensus and solutions for regional issues. The cities of our association are diverse and include cities of a few thousand people and a city of a million people.

The CASCC must respectfully **Oppose SB 937 Unless Amended** to address our concerns. As currently drafted, it 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, as well as extend by 24 months the expiration, effectuation, or utilization of a housing entitlement for a priority designated residential development project.

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. "Freezing" development fees and related conditions for an extended period ultimately mean that the local government cannot recover the ever increasing 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.

CASCC believes that both AB 1820 (Schiavo) and SB 937 are counterproductive. We support the intent of the legislature to improve the transparency, predictability, and governance of fees, while preserving the ability to fund public facilities and other infrastructure in a manner flexible enough to meet the needs of California's communities.

SB 937, as written, 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 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 its residents.

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. 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.

For these reasons, we have taken an "oppose unless amended position" on SB 937.

Sincerely,

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Chair, CASCC Legislative Action Committee

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