

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

DIVISION OF HOUSING POLICY DEVELOPMENT

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July 11, 2024

Justin Murphy, City Manager
 City of Menlo Park
 701 Laurel Street
 Menlo Park, CA 94025

Dear Justin Murphy:

RE: City of Menlo Park Senate Bill 9 Implementation — Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) received a request for technical assistance regarding the application of Senate Bill (SB) 9 (Chapter 162, Statutes of 2021) as it relates to the City of Menlo Park's (City) Residential Subdivision Recreation in Lieu Fees (Recreation Fees) charged on subdivision applications. The purpose of this letter is to provide technical assistance to the City regarding its implementation of SB 9 and clarify that recreation fees, commonly known as "Quimby fees," may not be imposed as a condition of approval for urban lot splits pursuant to SB 9.

Background

HCD understands that the City applies recreation fees to subdivision applications, including parcel maps under an SB 9 urban lot split.¹ As confirmed during a meeting between HCD and several City staff on February 1, 2024, the fee amount is derived from a formula multiplying the acres of parkland per household, number of new anticipated units, and the estimated fair-market value of acreage to be subdivided² as follows:

| Acres of parkland | Number of new single-family parcels | Estimated fair market value of one acre of land | Recreation in-lieu fee |
|-------------------|-------------------------------------|---|------------------------|
| 0.013 | 1 | \$9.8M | =\$127,000 |

These recreation fees are implemented pursuant to Government Code section 66477, commonly known as the Quimby Act. The Quimby Act authorizes local agencies, by ordinance, to require a dedication of land or impose payment fees in lieu thereof (commonly known as Quimby fees) for park or recreational purposes as a condition to the approval of a tentative map or parcel map under certain requirements. As authorized by the Quimby Act, the City uses funds generated by these fees for offsite improvements.³ However, SB 9 precludes any regulatory requirements for the construction of offsite improvements, thereby precluding the collection of recreation fees as a condition of approval on an SB 9 urban lot split application.

¹ Gov. Code, § 66411.7.

² Menlo Park Municipal Code 15.16.020

³ The City approved \$2.225 million in recreation in-lieu fee funds toward furniture, equipment, and interim services for the construction of the Menlo Park Community Campus project at the March 14, 2023, City Council Meeting.

SB 9 Precludes Requirements for the Construction of Offsite Improvements

SB 9 establishes eligibility criteria for the ministerial approval of a parcel map for an urban lot split that meets certain requirements. The law also specifies what a local agency cannot require in approving an urban lot split, including several types of exactions. Specifically, the law provides the following:

Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way **or the construction of offsite improvements** for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.⁴ (Emphasis added.)

Government Code section 66411.1, subdivision (a), contained within the Subdivision Map Act, establishes four categories of allowable requirements for improvements for subdivisions of four or fewer parcels. These limitations apply to subdivisions of four or fewer parcels regardless of whether the local agency requires a tentative map in addition to a parcel map.⁵ Specifically, the law provides the following:

Notwithstanding Section 66428, whenever a local ordinance requires improvements for a division of land which is not a subdivision of five or more lots, the regulations shall be limited to the dedication of rights-of-way, easements, **and the construction of reasonable offsite and onsite improvements** for the parcels being created.⁶ (Emphasis added.)

Quimby fees constitute a requirement for the construction of “offsite improvements” as contained in Government Code section 66411.7, subdivision (b)(3). That the fees constitute a requirement for the construction of offsite improvements is evident in the text of the Quimby Act. The Quimby Act limits allowable uses of the funds generated by the fees to the construction of offsite improvements: fees “are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision,” except that “fees may be used for the purpose of developing new or rehabilitating existing park or recreational facilities in a neighborhood other than the neighborhood in which the subdivision for which fees were paid as a condition to the approval” if certain findings are made.⁷

Because the imposition of Quimby fees constitutes a requirement for offsite improvements, Quimby fees cannot be imposed as a condition of approval for urban lot splits pursuant to SB 9.

⁴ Gov. Code, § 66411.7, subd. (b)(3).

⁵ 78 Ops.Cal.Atty.Gen. 158, available at <https://oag.ca.gov/system/files/opinions/pdfs/94-809.pdf>. (“Even though a local agency may require the filing of a tentative map under the terms of section 66428, the agency may not circumvent the limitations contained in section 66411.1 governing ‘a division of land which is not a subdivision of five or more lots.’”)

⁶ Gov. Code, § 66411.1, subd. (a).

⁷ Gov. Code, § 66477, subd. (a)(3).

Conclusion

HCD looks forward to assisting the City in its compliance with state housing laws and reminds the City that HCD has enforcement authority over SB 9, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a city's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law.⁸

If you have questions or need additional information, please contact Brandon Yung, of our staff, at brandon.yung@hcd.ca.gov.

Sincerely,



Shannan West
Housing Accountability Unit Chief

⁸ Gov. Code, § 65585, subd. (j).