Updates
April 17, 2023
Court Orders Refund of All Unexpended Fees in Landmark Mitigation Fee Act Case

A recent decision highlights the importance of strict compliance with the Mitigation Fee Act's requirement that findings be made every five years concerning unexpended fees. The Sixth District Court of Appeal held that the City of Palo Alto's failure to make such findings within the statutory deadline mandated refund of all unexpended fees, not merely fees held for more than five years. *Hamilton and High, LLC, et al., v. City of Palo Alto, et al.*, No. H049425 (6th Dist., March 20, 2023).

In 2013, Charles Keenan paid an "in-lieu parking fee" of $972,000 imposed as a condition of approval of a commercial development project on Hamilton Avenue in Palo Alto. The fee was imposed on all new commercial developments in order to fund parking facilities in the downtown area. As of the end of 2019, the City had a balance of over $6 million in unexpended parking fees.

The Mitigation Fee Act (Act) requires public agencies to make findings every five years concerning unexpended development impact fees. The City made findings for the parking fees for the 2007-08 and 2012-13 fiscal years but did not make such findings by the statutory deadline for the 2017-18 fiscal year (i.e., within 180 days of June 30). Keenan demanded a refund of the fee, claiming the City failed to comply with the Act. The appellate court agreed and ordered the City to refund all unexpended parking fees. In reaching that conclusion, the court made several important clarifications to the law governing such refund claims.

In-lieu fees are exactions subject to the Act's findings requirements. The City argued that findings were not required for the parking fees because developers had the election to either provide parking or pay an in-lieu fee. The court disagreed, finding that the fee was a "monetary exaction" imposed as a condition of approval of a project to fund facilities related to the project and therefore met all requirements of the Act. Based on an extensive review of the case law regarding in-lieu fees and the Act, the court found no support for the claim that the "in-lieu" or elective aspect of the imposition changed the nature of the fee for purposes of the Act.

The statute of limitations runs from the date a request for refund is denied. Keenan requested a refund in January 2020, which the City rejected in February 2020; Keenan filed suit three months later. The trial court held that Keenan's action was time-barred because it was not filed within one year of the December 2018 deadline for adoption of the five-year findings. The appellate court concluded that the thrust of Keenan's lawsuit was enforcement of a refund of the unexpended fees rather than a challenge to the City's failure to make findings. As such, the limitations period did not begin until the City denied Keenan's refund request, and Keenan's suit was timely filed.

Belated findings do not satisfy the Act. After denying Keenan's refund request, the City adopted five-year findings in May 2020 and contended that these findings satisfied the Act's requirements. The court found that this argument "ignore[d] the language specifying 'If the findings are not made *as required by this subdivision*, the local agency shall refund the moneys in the account or fund as provided in subdivision (e).'" Because the May 2020 findings were not made within the statutory deadline, they were not made "as required" by the Act, and a refund was therefore mandated.

Failure to make five-year findings that comply with the Act requires refund of all unexpended fees. The City claimed that the five-year findings requirement applied only to fees held for more than five years and that because the City had transferred $1.3 million from the parking fund to a capital fund, this had exhausted the balance of fees held in the fund for over five years and excused the findings requirement. The court rejected this argument, ruling that the plain language of the statute required the five-year findings to address *all* unexpended fees, not merely those held for more than five years. The court noted that its reading was consistent with the five-year reports issued by the City, which did not break out fees by the date of deposit. The consequence of failure to make timely findings for the 2107-18 fiscal year was refund of all unexpended fees, regardless of the date of collection.

Takeaway

This decision underscores the importance of meticulous compliance with the requirements and deadlines of the Act. Five-year findings must be made for all development fees that fall within the Act's definition, whether or not paid electively in lieu of some other condition of approval. The findings must be made within 180 days of the end of the applicable fiscal year and must cover all unexpended fees in the fund, not merely fees held for more than five years. Agencies that fail to adopt timely findings or adopt findings that do not meet the strictures of the Act are at risk of having to refund the entire balance to then-current owners of the properties subject to such fees.

Authors

Explore more in

Real Estate & Land Use

Related insights

Update

CPPA Signals Significant Revisions Ahead

Update

New York’s Amended Retail Worker Safety Act To Take Effect on June 2, 2025