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OPINION	:	No. 79-803
	:	
of	:	<u>January 29, 1980</u>
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SUBJECT: SUBDIVIDER PAYMENT INTO TRAFFIC SIGNAL FUND—Cities have no authority to require subdividers, as a condition of approving subdivision maps, to pay money into a fund to be used to install traffic signals at major intersections within the general area but outside the boundaries of the subdivision.

The Honorable S. Floyd Mori, Assemblyman, Fifteenth District, has requested an opinion on a question which we have rephrased as follows:

Does a charter city have authority to require a subdivider to pay into a fund to be used to install traffic signals at major intersections within the general area but outside the boundaries of the subdivision as a condition to the approval of subdivision maps?

CONCLUSION

A city has no authority to require subdividers, as a condition of approving subdivision maps, to pay money into a fund to be used to install traffic signals at major intersections within the general area but outside the boundaries of the subdivision.

ANALYSIS

We are informed that the City Council of the City of Hayward, a charter city, is contemplating enacting a regulation which would require a subdivider, as a condition for receiving approval of a tentative or final subdivision map, to pay a sum of money into a fund to be used to finance the installation of traffic signals at major intersections located within the general area of but outside the boundaries of the subdivision. We understand this fee would be imposed irrespective of whether there was any showing or a determination that the need for the traffic signal was in any way connected with or due to the impact of the proposed subdivision.

The Subdivision Map Act (Gov. Code, § 66410 *et seq.*)¹ has several objectives including that of regulating and controlling the design and improvement of subdivisions with proper consideration of the relation of subdivisions to adjoining areas (*Pratt v. Adams* (1964) 229 Cal. App. 2d 602, 605–606 and cases cited therein) and of conformance with the city or county general or specific plans. (§§ 664735, 66474(a)(b); 56 Ops. Cal. Atty. Gen. 274, 278 (1973).)

The Subdivision Map Act occupies the field as to subdivisions of property. (*Codding Enterprises v. City of Merced* (1974) 42 Cal. App. 3d 375, 378; *Santa Clara County Contractors Assn. Etc., v. City of Santa Clara* (1965) 232 Cal. App. 2d 564, 578.) Thus, even though the Act requires each city and county to adopt a local ordinance to implement the Act within its jurisdiction (§ 66411), and a city or county may reject a tentative or final subdivision map which does not comply with that ordinance (§ 66473; *Metro Realty v. County of El Dorado* (1963) 222 Cal. App. 2d 508, 511), the ordinance must be consistent with the Act. (*Friends of Lake Arrowhead v. Board of Supervisors* (1974) 38 Cal. App. 3d 497, 505.) An implementing ordinance which is inconsistent with the language or intent of the Act is invalid. (*Santa Clara County Contractors Assn. Etc., v. City of Santa Clara, supra*; *Kelber v. City of Upland* (1957) 155 Cal. App. 2d 631, 636; 45 Ops. Cal. Atty. Gen. 23, 24 (1965).) This rule applies to charter cities, even though land use regulation has traditionally been considered a municipal affair (*Codding Enterprises v. City of Merced, supra*; *Newport Bldg. Corp. v. City of Santa Ana* (1962) 210 Cal. App. 2d 771, 777; *Hirsh v. City of Mountain View* (1976) 64 Cal. App. 3d 425, 430–431; but see *Longridge Estates v. City of Los Angeles* (1960) 183 Cal. App. 2d 533, 539.)

Our task, then, is to examine the provisions of the Subdivision Map Act to ascertain whether that Act authorizes the enactment of a regulation, as part of the local ordinance of the type contemplated here. As pertinent to this discussion, the Act requires or authorizes two types of requirements that could relate to the installation of traffic signals regulation

¹ All references to code section, unless otherwise identified, are to the Government Code.

and control of design and improvement of subdivisions: and requirements for dedication of lands or payment of fees. It is our conclusion that the Act does not authorize the general exaction of a fee from all subdividers to be used for the installation of traffic signals outside the boundaries of the subdivision.²

As noted, the Subdivision Map Act is a state mandate for local regulation of subdivisions of land within the context of the Act. Section 66411 provides in part:

“Regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies.[³] Each local agency shall by ordinance regulate and control subdivisions for which this division requires a tentative and final or parcel map. Such ordinance shall specifically provide for proper grading and erosion control, including the prevention of sedimentation or damage to offsite property. Each local agency may by ordinance regulate and control other subdivisions, provided that such regulations are not more restrictive than the regulations for those subdivisions for which a tentative and final or parcel map are required by this division,”

Two key words in that section, “design” and “improvement” are defined in the Act.

“‘Design’ means: (1) street alignments, grades and widths; (2) drainage and sanitary facilities and utilities, including alignments and grades thereof; (3) location and size of all required easements and rights-of-way; (4) fire roads and firebreaks; (5) lot size and configuration; (6) traffic access; (7) grading; (8) land to be dedicated for park or recreational purposes; and (9) such other specific requirements in the plan and configuration of the entire subdivision as may be necessary or convenient to insure conformity to or implementation of the general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of this title, or any specific plan adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Division 1 of this title.” (§ 66418.)

“(a) ‘Improvement’ refers to such street work and utilities to be installed, or agreed to be installed, by the subdivider on the land to be used for public or private streets, highways, way, and easements, as are necessary for the general use of the lot-owners in the subdivision and local

² We express no opinion as to whether a city could, outside the context of approving and regulating subdivisions, enact an ordinance exacting the type of fee discussed herein.

³ Local agency means a city, county or city and county. (§ 66420.)

neighborhood traffic and drainage needs as a condition precedent to the approval and acceptance of the final map thereof.

“(b) ‘Improvement’ also refers to such other specific improvements or types of improvements, the installation of which, either by the subdivider, by public agencies, by private utilities, by any other entity approved by the local agency or by a combination thereof, is necessary or convenient to insure conformity to or implementation of the general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of this title, or any specific plan adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Division 1 of this title.” (§ 66419.)

These sections do not authorize the imposition of a general fee for the installation of improvements off the subdivision land itself. The control of design and improvement sections of the Subdivision Map Act do not authorize the imposition of fees to be deposited in an account for future improvements (*Wine v. Council of City of Los Angeles* (1960) 177 Cal. App. 2d 157, 170–171), nor do those sections authorize the conditioning of subdivision map approval on payments by the subdivider for offsite improvements. (*Id.* at 171.)⁴

Section 66451.2 allows the local agency to “. . . establish reasonable fees for the processing of tentative, final and parcel maps and for other procedures required or authorized by this division or local ordinance.” This section does not, however, authorize the imposition of fees for a park and recreation fund (*Kelber v. City of Upland* (1957) 155 Cal. App. 2d 631, 637–638; *Santa Clara County Contractors Etc., Assn. v. City of Santa Clara* (1965) 232 Cal. App. 2d 564, 578) or the imposition of the business license tax on subdividers as a condition of approval of a subdivision map. (*Newport Bldg. Corp. v. City of Santa Ana* (1962) 210 Cal. App. 2d 771, 777.) In short, this section limits the fees authorized to those purposes set forth in the section.

We turn next to the more specific sections that authorize local agencies to exact fees and dedications of land. The courts in California have held that the government may require the dedication of land as a condition of approving a subdivision. (*Associated Home Builders Inc. v. City of Walnut Creek* (1971) 4 Cal. 3d 633, *Ayres v. City Council of Los Angeles* (1949) 34 Cal. 2d 31, 38.) This may include a requirement that fees be paid in lieu of dedication of land, and the fees may be expended by the governmental agency on land

⁴ Subdivision (h) of section 66419 relating to the definition of “improvement” was added after the *Wine* case was decided. The *Wine* case clearly limited the definition of improvements in subdivision (a) to onsite improvements. There are no words used in subdivision (b) which would appear either to overrule the *Wine* case or to expand the definition in either subdivision (a) or (b) to include offsite improvements.

other than the subdivided land and for the benefit of the general public as well as the residents of the subdivision. (*Associated Home Builders Inc. v. City of Walnut Creek, supra*, 4 Cal. 3d at 639–641, including footnote 6; see Comment, *Subdivision Extractions in California; Expansion of Municipal Power* (1972) 23 Hastings L.J. 403, Johnston, *Constitutionality of Subdivision Control Exactions: The Quest for a Rationale* (1967) 52 Cornell L.Q. 871) If such exactions are to be part of subdivision control and regulation, they must be authorized by the Subdivision Map Act, and may not be used for general revenue producing purposes. (*Santa Clara County’ Contractors Etc., Assn. v. City of Santa Clara, supra* (fees for capital outlay recreation purposes not authorized); *Newport Bldg. Corp. v. City of Santa Ana, supra* (business license fees nor consistent with Subdivision Map Act); *Kelber v. City of Upland, supra* (1957) 155 Cal. App. 2d 631, 637–638 (fees for park and school site fund not authorized); and see *Wine v. Council of City of Los Angeles, supra*, 177 Cal. App. 2d at 171 (proposal to require subdivider to pay costs of improving offsite streets not authorized).)⁵

In addition to the design and improvement dedications contained in sections 66411, 66418 and 66419 discussed above, the Subdivision Map Act contains many sections authorizing the local agency to require dedication of land or payment of fees for specific purposes. (See generally, 9 Hagman and Volpert, *California Real Estate Law and Practice* (1979) ch. 291.) These include dedications of land or easements within the subdivision for streets, alleys, drainage, public utility and other public easements (§ 66475); bicycle paths (§ 66475.1); local transit facilities (§ 66475.2); solar easements for solar energy systems (§ 66475.3); and public access to public resources such as public waterways, rivers or streams (§§ 66478.1–66478.14). The Act also provides for exacting a dedication of land or the payment of fees in lieu thereof for park and recreational purposes. (§ 66477.) Although not constitutionally so limited, (*Associated Home Builders Inc. v. City of Walnut Creek, supra*, 4 Cal. 3d at 640–641 and fn. 6, if fees in lieu of dedication of land for park and recreational purposes are exacted pursuant to section 66477, the expenditures of such fees must “ . . . have a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.” In addition, the Act authorizes the imposition of fees as a condition of approval of a subdivision to pay for the cost of drainage and sewer facilities (§ 66483); bridges or major thoroughfares (§ 66484); and ground water recharge facilities. (§ 66485.) In each of these authorizations for the imposition of fees, the amount of the fees is statutorily limited to the proportional share of the cost of the improvement which is of benefit to or meets the needs of the subdivided land.

⁵ The *Santa Clara* and *Kelber* cases preceded and perhaps were the cause of the adoption of the predecessor of section 66477 providing for dedication of land or fees for parks and recreation purposes. (Stats. 1965 ch. 1809.) The principle that the Subdivision Map Act must contain an authorization for the exaction of the dedication of land or fees remains unchanged.

Within this detailed list⁶ of permissible dedication or fee requirements, we find nothing that relates to exacting a fee for the installation of traffic lights off the land to be subdivided. We thus conclude that the Legislature has not, through the Subdivision Map Act, authorized cities or counties to exact a fee as a condition for approval of a subdivision map, for the purpose of creating a fund for the installation of traffic signals at major intersections located outside the boundaries of the subdivision.⁷

⁶ There is also in the Subdivision Map Act an authorization for cities and counties to require a subdivider to dedicate land for school purposes. If the offer of dedication is accepted, however, the school district must pay for the land. (§ 66478.) See also sections 65970–65978 (not part of the Subdivision Map Act), allowing a city or county, under certain conditions, to require the dedication of land or payment of fees for interim school facilities as a condition of rezoning, granting permits for residential use or approving to tentative subdivision map for residential purposes.

⁷ This opinion does not deal with what condition may be imposed as measures to mitigate environmental impacts under the California Environmental Quality Act. (Pub. Res. Code, § 21000 *et seq.*) (See Pub. Res. Code §§ 21002, 21002.1(a); *Laurel Hills Homeowners Assn. v. City Council* (1978) 83 Cal. App. 3d 515, 525-527.) Similarly, in view of our conclusion, we express no opinion as to whether such a fee would constitute a “special tax” within the meaning of section 4 of Article XIII A of the California Constitution, thus requiring voter approval.