

# City Ordered to Refund Unspent “In-Lieu Parking Fees” Under the California Mitigation Fee Act

04.13.2023

The California Mitigation Fee Act (the “Act”) applies to “in-lieu parking fees” imposed as a condition of approval to offset the impact of new developments.

In *Hamilton and High, LLC v. City of Palo Alto*, the California Court of Appeal ordered the City to refund nearly a million dollars of unspent “in-lieu parking fees” to the developer of a mixed use project because the City failed to meet the periodic reporting requirements of the Act. The parking fees were imposed under a City program allowing developers to pay into a fund for new public parking facilities in lieu of constructing the minimum required parking spaces themselves.

The Act requires that local agencies make specific findings every five years with respect to any unexpended fees collected as a condition of project approvals. Among other things, the findings must identify what public facilities the fees will fund, the sources and amounts of funding, and when full funding for the facilities will be available. The court concluded that Palo Alto failed to make the required five-year findings for the parking fund and must therefore return the unspent fees to the developer with interest.

The City argued that the Mitigation Fee Act should not apply to its in-lieu parking fee because the developer **voluntarily elected** to pay the in-lieu parking fee, and the fee was, therefore, not strictly a “condition” of approval. Rejecting that argument, the Court found that the Mitigation Fee Act applies to in-lieu project impact fees regardless whether the developer could choose to pay the fee or construct the minimum required spaces itself.

In light of this case, it is imperative that local agencies holding in-lieu parking fees make the required five-year findings under the Mitigation Fee Act. The five-year period is measured from the date of the first deposit of a parking in-lieu fee into the relevant agency fund (and every five years after that)—not the dates of each subsequent payment into the fund.

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## ATTORNEYS

Travis Kaya

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## PRACTICE AREAS

Municipal & Public Agency  
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If you have any questions or would like further information regarding this case or the Mitigation Fee Act, please contact **Travis Kaya** or any member of our **Municipal and Public Agency Law Department**.