

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2430 (Alvarez) – As Amended April 18, 2024

SUBJECT: Planning and zoning: density bonuses: monitoring fees

SUMMARY: Prohibits a city, county, or city and county from charging local monitoring fees on 100% affordable housing developments using Density Bonus Law (DBL) to ensure the continued affordability required under DBL and any applicable local inclusionary housing ordinance. Specifically, **this bill:**

- 1) Prohibits a city, county, or city and county from charging a monitoring fee on a housing development where, at minimum, 100 % of the total units and density bonus units are for lower income households and a maximum of 20% of the units in the development may be occupied by moderate income households, if the housing development meets all of the following:
 - a) The housing development is subject to a recorded regulatory agreement with California Tax Credit Allocation Committee (TCAC), the California Debt Limit Allocation Committee (CDLAC), or the Department of Housing and Community Development (HCD).
 - b) Prior to receiving a building permit, the applicant provides to the local government a fully executed Tax Credit Reservation Letter indicating that the applicant accepted the award.
 - c) The applicant provides to the local government a copy of a recorded regulatory agreement with the California Tax Allocation Committee, the California Debt Limit Allocation Committee, or the Department of Housing and Community Development.
 - d) The applicant agreed to provide to the local government the compliance monitoring document required pursuant to California Tax Allocation Committee, California Debt Limit Allocation Committee, or Department of Housing and Community Development regulations.
- 2) Provides that a housing development that is currently placed in service, is subject to a monitoring fee, and meets the requirements of 1), above, shall no longer be subject to that fee, beginning January 1, 2025.
- 3) Allows a city, county, or city and county to charge a monitoring fee to a housing development described in 1) if any of the following conditions are met:
 - a) The applicant utilizes a local density bonus program that requires deeper affordability, including a higher number of affordable units, or uses a local incentive program where a percentage of the units are affordable to and occupied by moderate income households.
 - b) The applicant accepts a local funding source that requires different affordability, measured through area median income or rents, than what is monitored for by the

California Tax Allocation Committee, the California Debt Limit Allocation Committee, or the Department of Housing and Community Development.

- c) The applicant accepts funding from a regional, state, or federal agency other than the California Tax Allocation Committee, the California Debt Limit Allocation Committee, or the Department of Housing and Community Development that requires local monitoring activities that would not otherwise be conducted by the California Tax Allocation Committee, the California Debt Limit Allocation Committee, the Department of Housing and Community Development, or the public agency issuing the funding.
- 4) Defines for purposes of this bill, “monitoring fee” to mean a fee charged by a city, county, or city and county on a recurring basis to oversee and ensure the continued affordability of a housing development pursuant to this section and any applicable local inclusionary housing ordinance.
- 5) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

EXISTING LAW:

- 1) Establishes Density Bonus Law, which provides a pathway for an applicant to seek a density bonus for housing in all cities, counties, or cities and counties in the state. (Government Code (GOV) § 65915)
- 2) Requires cities and counties to grant a density bonus, based on a specified formula, when an applicant for a housing development of at least five units seeks and agrees to construct a project that will contain at least one of the following:
 - a) Ten percent of the total units of a housing development for lower-income households;
 - b) Five percent of the total units of a housing development for very low-income households;
 - c) A senior citizen housing development or age-restricted mobilehome park;
 - d) Ten percent of the units in a common interest development (CID) for moderate-income households, provided the units are available for public purchase;
 - e) Ten percent of the total units for transitional foster youth, disabled veterans, or homeless persons;
 - f) Twenty percent of the total units for lower-income students in a student housing development, as specified; or,
 - g) One hundred percent of all units in the development are for lower-income households, except that up to 20 percent of the units may be for moderate-income households. (GOV § 65915)
- 3) Mandates that agencies adopting a new service fee, or increasing an existing fee, charged to a development project must do so through an ordinance or resolution, and must be adopted through a public hearing. (GOV § 66017)

- 4) Stipulates that any service fee charged may not exceed the estimated reasonable cost of providing the service for which the fee is charged. (GOV § 66014)
- 5) Establishes the California Tax Credit Allocation Committee (TCAC) (GOV § 50199.17), California Debt Limit Allocation Committee (CDLAC) (GOV § 8869.94), and various affordable housing funding programs through the California Department of Housing and Community Development (HCD).

FISCAL EFFECT: This bill is keyed fiscal and contains a state mandated local program.

COMMENTS:

- 1) **Bill Summary.** AB 2430 prohibits local governments from imposing monitoring fees on 100% affordable housing projects that have used Density Bonus Law if the project is subject to monitoring by state agencies. A local agency may charge monitoring fees to a housing development that is monitored by the state if the project accepts incentives from a local program, accepts local funding, or receives funding from local, state, or federal agencies that are not TCAC, CDLAC, or HCD. This bill is sponsored by the California Housing Consortium and Housing California.
- 2) **Author's Statement.** According to the author, "All affordable housing projects that utilize State Density Law and receive state funding, are subject to compliance monitoring to ensure that the units are occupied by a tenant at an eligible income level and that developments meet habitability standards. This state level compliance monitoring is a thorough process that includes desk audits and physical inspections conducted by HCD and TCAC."

"Although most cities rely on state monitoring activities to ensure compliance, some cities and counties charge developers a fee to also provide compliance monitoring. While local monitoring fees can vary, most are hundreds of dollars per unit annually, which is in addition to the monitoring fees the state charges.

"California is one of the most expensive places to build housing in the state, which makes housing developments incredibly difficult to pencil. This is especially true for affordable housing projects that rely on state and federal funding to make it viable. Any additional cost, especially when it funds duplicative activities, can unnecessarily make or break the viability of a project. By cutting duplicative costs for developers, AB 2430 will play an important role reducing the price of building affordable housing in California."

- 3) **Statewide Housing Needs.** According to the Department of Housing and Community Development's (HCD's) 2022 Statewide Housing Plan Update, California's housing crisis is a half century in the making. After decades of underproduction, supply is far behind need and housing and rental costs are soaring. As a result, millions of Californians must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation, directly impacting quality of life in the state. One in three households in the state doesn't earn enough money to meet their basic needs. In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who experienced homelessness for the first time.

To meet this housing need, HCD determined that California must plan for more than 2.5 million new homes, and no less than one million of those homes must be affordable to lower-income households, in the 6th Regional Housing Needs Allocation (RHNA). This represents more than double the housing needed in the 5th RHNA cycle. As of April 5, 2024, in the 6th RHNA cycle, jurisdictions across the state have permitted the following:

- a) 2.1 percent of the very low-income RHNA
- b) 4.8 percent of the low-income RHNA
- c) 4.8 percent of the moderate-income RHNA
- d) 12.7 percent of the above moderate-income RHNA

- 4) **Cost of building affordable housing.** It is expensive to build housing in California. The UC Berkeley Turner Center finds that challenging macroeconomic conditions, including inflation and high interest rates, affect the availability and cost of capital, resulting in rising costs for labor and materials.¹ Furthermore, workforce and supply shortages have exacerbated the already high price of construction in California, and economic uncertainty has made equity partners and lenders apprehensive about financing new housing development proposals.²

An analysis by the California Housing Partnership compares the cost of market rate development prototypes developed by the Turner Center with the median cost of developing affordable rental homes. In the four regions analyzed, the study found that the cost of developing one unit of affordable housing ranged from approximately \$480,000 to \$713,000, while the cost of developing one unit of market rate housing in the state ranged from approximately \$508,000 to \$637,000.³

- 5) **Affordable housing monitoring fees.** Monitoring fees are one type of fees commonly applied to deed-restricted affordable housing developments in California. Affordable housing monitoring fees are charged by local governments to oversee the compliance of affordable housing developments with regulatory agreements and affordability covenants. These fees are typically collected annually and are used to cover the costs associated with ensuring that affordable housing units remain affordable at the rental rates specified in the deed restriction, and monitoring tenant income eligibility and rent restrictions. The stated goal of these fees is to sustain the long-term affordability and quality of housing while ensuring that developers and property owners adhere to the commitments made under affordable housing agreements.

The amount and type of monitoring fees charged by local governments vary from jurisdiction to jurisdiction. Some jurisdictions charge fees on a per unit basis, some charge a flat fees, and some apply a sliding scale based on the project size. For example, the City of Berkeley charges a monitoring fee of \$432 per unit per year, while the City of Dublin charges a sliding

¹ David Garcia, Ian Carlton, Lacy Patterson, and Jacob Strawn, *Making It Pencil: The Math Behind Housing Development (2023 Update)*, Turner Center for Housing Innovation, December 2023, <https://turnercenter.berkeley.edu/research-and-policy/making-it-pencil-2023/>

² IBID.

³ Mark Stivers, *Affordable Housing Compares Favorably to Market-Rate Housing From a Cost Perspective*, California Housing Partnership, January 2024: <https://chpc.net/affordable-housing-compares-favorably-to-market-rate-housing-from-a-cost-perspective/#:~:text=It%20turns%20out%20that%20costs,market%20rate%20developments%20do%20not.>

scale based on the number affordable units: \$1,448 per year for developments of 20 units or less, \$2,321 per year for 21-100 units, and \$3,343 annually for projects of over 101 units.

These local monitoring fees are often charged on top of state monitoring fees. When state funds are involved in affordable housing development, which is almost always the case in California, the state conducts extensive monitoring of the deed restricted affordable units funded. For projects that receive affordable housing funding in the form of loans, tax credits, or bonds, the following state monitoring fees apply:

HCD: typically charges an annual fee of 0.42 percent of the original principal loan balance for most conventional multifamily loan programs, though the fee may vary based on the specific funding program. This funds routine physical site inspections, which includes, but is not limited to, an examination of tenant files, unit conditions, property standards (common areas, exterior conditions), as well as review of the Management Plan and/or Property Management Agreement.

TCAC: charges a one-time per unit fee of \$410 to cover the costs associated with compliance monitoring throughout the Federal Compliance Period and the Extended-Use period.

- 6) **Density Bonus Law.** Density Bonus Law (DBL) was originally enacted in 1979 as an incentive to encourage housing developers to produce affordable units at below market rates. In return for including a certain percentage of affordable units, housing developers receive the ability to add additional units for their project above the jurisdiction's allowable zoned density for the site (thus the term "density bonus").

The affordability units built using density bonus must be deed restricted for 55 years. Additionally, DBL specifies concessions and incentives around development standards (e.g., architectural, height, setback requirements) and reductions in vehicle parking requirements that projects can receive to offset the cost of building affordable units. Both market rate and 100 percent affordable housing projects can use these provisions and all local governments are required to adopt a density bonus ordinance. However, failure to adopt an ordinance does not exempt a local government from complying with the requirements of DBL. DBL is a critical tool in the state's toolkit when it comes to reducing the price of affordable housing development, and incentivizing the construction of high density housing.

7) **Previous Legislation.**

- a) AB 578 (Berman), 2023 would have standardized the monitoring fees charged by the California Department of Housing and Community Development (HCD) for the No Place Like Home program to 0.42% per year, or \$260 per unit, whichever is less. The bill was held in suspense.
- b) AB 434 (Daly) Chapter 192, Statutes of 2020 standardized the monitoring fee and procedures for certain multifamily housing funding programs administered by HCD to 0.42% per year, and standardized the monitoring requirements for programs impacted by the bill.

- 8) **Arguments in Support.** The California Housing Consortium writes in support, "The habitability and safety of housing available to low-income families is just as important as the

construction of them. To ensure compliance with safety standards and building codes, all affordable housing units which receive funding via the State Density Bonus Law are subject to compliance monitoring from California Tax Credit Allocation Committee (TCAC) and HCD on an annual and as-needed basis. Some cities and counties choose to conduct additional compliance monitoring, the financial burden of which falls on the developers who already are responsible for the fees levied by the State. These local monitoring activities are in most cases redundant, and can create unnecessary delays and additional financial strain for developers already bound to strict financial limits.”

“AB 2430 prohibits cities and counties from charging developers for this additional compliance monitoring, if the development is qualified under the Density Bonus Law and engaged in regulatory monitoring activities with TCAC, HCD, and CDLAC. This measure lowers costs for affordable housing developments, while also maintaining the need for safely-constructed and maintained housing units in California.”

- 9) **Arguments in Opposition.** According to the San Diego Housing Commission (SDHC), Assembly Bill “would prevent local governments from charging fees for conducting compliance monitoring on deed-restricted affordable housing units constructed under State Density Bonus Law or applicable local inclusionary housing ordinances without absolving jurisdictions from ensuring continued affordability under existing local and federal compliance requirements.

“The process the bill proposes to use moving forward, where an affordable housing developer agrees to provide the local jurisdiction the self-certification authorizations and tax documents submitted to the California Debt Limit Allocation Committee (CDLAC) and the California Tax Credit Allocation Committee (TCAC), would impact a jurisdiction’s ability to enforce federal and local requirements, which it is contractually obligated to do. It also does not provide the level of accountability that active compliance monitoring provides, which may result in an increase of fraud, non-compliance, and impacts to low-income households.”

- 10) **Double-Referral.** This bill was double-referred to the Assembly Housing and Community Development Committee, where it passed on a 9-0 vote on April 17, 2024.

REGISTERED SUPPORT / OPPOSITION:

Support

Housing California [Sponsor]
 California Housing Consortium [Sponsor]
 Brilliant Corners
 California Apartment Association
 Community Corporation of Santa Monica
 EAH Housing
 Homes & Hope
 Leadingage California
 Midpen Housing Corporation
 Mutual Housing California
 Wakeland Housing and Development Corporation

Opposition

City of Inglewood

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