

Date of Hearing: May 1, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2663 (Grayson) – As Amended March 19, 2024

SUBJECT: Affordable housing fees: reports.

SUMMARY: Requires local agencies that collect inclusionary housing in-lieu fees to post information about the fees collected and spent on their internet website. Specifically, **this bill:**

- 1) Defines “affordable housing fees” as inclusionary housing zoning in-lieu fees.
- 2) Defines “local agency” as a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.
- 3) Requires, commencing on January 1, 2026, a local agency that collects affordable housing fees to annually post on its internet website both of the following:
 - a) The amount of affordable housing fees collected in the previous year.
 - b) Whether the affordable housing fees are intended to be used for a project, if any.
- 4) Specifies that, commencing on January 1, 2026, and every five years thereafter, a local agency that collects affordable housing fees shall post on its internet website both of the following:
 - a) The amount of affordable housing fees collected in the past five years.
 - b) The projects that the affordable housing fees were spent on.
- 5) Finds and declares that this bill addresses a matter of statewide concern rather than a municipal affair. Therefore, this bill applies to all cities, including charter cities.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Bill Summary.** This bill requires a local agency that collects specified affordable housing fees to annually post on its website, beginning January 1, 2026, information related to the amount of fees collected in the previous year and whether the affordable housing fees are intended to be used for a project, if any. Beginning on January 1, 2026, this bill also requires a local agency that collects affordable housing fees to post on its website, every five years, information regarding the amount of fees collected in the past five years and the projects the fees were spent on. This bill is sponsored by the author.
- 2) **Author’s Statement.** According to the author, “California is in the middle of a housing affordability crisis, and the high cost of development fees and local regulations has repeatedly been identified as one of the major drivers of the crisis. According to the Turner Center, development fees can amount to anywhere from 6% to 18% of the median home

price, depending on location. While many development fees fall under the Mitigation Fee Act, certain fees in the development process are not governed by the Mitigation Fee Act, this includes in-lieu fees for affordable housing.

“AB 2663 would help enhance transparency and accountability on inclusionary housing in-lieu fees. The bill would require any local agency that collects inclusionary housing in-lieu fees to provide annual reports on how much was collected in fees and if the fees have been intended to be used for a project, if any. By making this information available and accessible, this bill will help to ensure that fees collected in the development process are well accounted for and implemented effectively during our housing affordability crisis.”

- 3) **Inclusionary Housing.** Inclusionary housing is a policy tool that encompasses both inclusionary zoning and the payment of inclusionary housing in-lieu fees, aimed at increasing the supply of deed-restricted affordable homes in new residential developments. Inclusionary zoning requires developers to allocate a certain percentage of units in new housing development as affordable to low- and moderate-income households, promoting socioeconomic diversity and equitable access to housing. In-lieu fees offer developers the flexibility to contribute financially to local affordable housing funds instead of integrating affordable units directly into their developments. These fees are then used by local jurisdictions to finance the development of affordable housing elsewhere in the community.
- 4) **Mitigation Fee Act.** When approving development projects, counties and cities can require the applicants to mitigate the project's effects by paying fees—known as mitigation fees, impact fees, or developer fees. The California courts have upheld impact fees for sidewalks, parks, school construction, and many other public purposes. When establishing, increasing, or imposing a fee as a condition of approving a development project, the Mitigation Fee Act requires local officials to:
 - a) Identify the fee’s purpose.
 - b) Identify the fee’s use, including the public facilities to be financed.
 - c) Determine a reasonable relationship between the fee’s use and the development.
 - d) Determine a reasonable relationship between the public facility’s need and the development.
- 5) **AB 1483 of 2019.** In response to a 2019 Turner Center for Housing Innovation report that studied fee transparency, among other issues, AB 1483 (Grayson), Chapter 662, Statutes of 2019, required cities, counties, and special districts to post specified housing related information on their websites. This information included the following:
 - a) A current schedule of fees, exactions, and affordability requirements imposed by the city, county, or special district, including any dependent special districts of the city or county, applicable to a proposed housing development project, which must be presented in a manner that clearly identifies the fees, exactions, and affordability requirements that apply to each parcel.

- b) All zoning ordinances and development standards, which must specify the zoning, design, and development standards that apply to each parcel.
- c) A list that cities and counties must develop under existing law of projects located within military use airspace or a low-level flight path.
- d) Specified annual fee reports or specified annual financial reports.
- e) An archive of impact fee nexus studies, cost of service studies, or equivalent, conducted by the city, county, or special district on or after January 1, 2018.

Since the passage of AB 1483, the information required to be posted on a local agency's website has changed. AB 1473 (Senate Committee on Governance and Finance), Chapter 371, Statutes of 2020, required local agencies to separately post their connection fees and capacity charges, without being tied to specific parcels, and made technical fixes to ensure that special districts were properly accounted for by AB 1483. Additionally, AB 602 (Grayson), Chapter 347, Statutes of 2021, required local agencies, among other things, to do the following:

- a) Post a written fee schedule or a link directly to the written fee schedule on its internet website.
 - b) Request from a development proponent, upon issuance of a certificate of occupancy or the final inspection, whichever occurs last, the total amount of fees and exactions associated with the project for which the certificate was issued. The city or county must post this information on its website, and update it at least twice per year. A city or county is not responsible for the accuracy of the information received by the development proponent.
- 6) **Committee Amendments.** The author has agreed to the following clarifying amendments:

65906.6. (a) For the purpose of this section, the following definitions apply

(1) ~~“Affordable housing fees” means inclusionary housing zoning in-lieu fees.~~
“Inclusionary housing in-lieu fees” means fees imposed as an alternative means of compliance with an inclusionary housing requirement.

(2) “Local agency” means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

(b) Commencing on January 1, 2026, a local agency that collects **inclusionary housing in-lieu fees** ~~affordable housing fees~~ shall annually post on its internet website both of the following:

(1) The amount of ~~affordable housing fees~~ **inclusionary housing in-lieu fees** collected in the previous year.

(2) Whether the **inclusionary housing in-lieu fees** ~~affordable housing fees~~ are intended to be used for a project, if any.

(c) Commencing on January 1, 2026, and every five years thereafter, a local agency that collects **Inclusionary housing in-lieu fees** ~~affordable housing fees~~ shall post on its internet website both of the following:

(1) The amount of inclusionary housing in-lieu fees ~~affordable housing fees~~ collected in the past five years.

(2) The projects that the inclusionary housing in-lieu fees ~~affordable housing fees~~ were spent on.

- 7) **Previous Legislation.** AB 602 (Grayson), Chapters 347, Statutes of 2021, added new requirements to impact fee nexus studies. Requires cities and counties to request certain information from development proponents and requires the Department of Housing and Community Development to develop a nexus study template.

AB 1483 (Grayson), Chapter 662, Statutes of 2019, required a city, county, or special district to maintain on its internet website, as applicable, a current schedule of fees, exactions, and affordability requirements imposed by the city, county, or special district, including any dependent special district and annual fee reports or annual financial reports, as specified. The bill required a city, county, or special district to provide on its internet website an archive of impact fee nexus studies, cost of service studies, or equivalent, as specified.

AB 1505 (Bloom), Chapter 376, Statutes of 2017, authorized the legislative body of any city or county to adopt an inclusionary housing ordinance that requires the inclusion of residential rental units affordable to lower- and moderate-income households when housing developments are built.

- 8) **Related Legislation.** AB 3012 (Grayson) requires cities and counties to make available on their internet websites a fee estimate tool that the public can use to calculate an estimate of fees and exactions for a proposed housing development, and requires the Department of Housing and Community Development to create a fee schedule template and a list of best practices, as specified.

- 9) **Arguments in Support.** Habitat for Humanity California writes in support, “AB 1505 (Bloom, 2017) restored the ability for local jurisdictions to adopt inclusionary housing requirements. The bill allowed jurisdictions to adopt policies that required that a certain number of units be included in a development specifically for lower- income individuals. AB 1505 also specified that jurisdictions that adopt these policies must also provide an alternative means of compliance, which can include land dedication, off-site construction, and the payment of in-lieu fees.

“While many fees that are collected throughout the development process are governed by the Mitigation Fee Act, not all fees fall under the Act’s jurisdiction. This includes in-lieu fees that are charged under local inclusionary housing ordinances. While many inclusionary housing ordinances include alternative means of compliance, including the payment of in-lieu fees to build affordable, there is no mechanism that helps ensure that these fees are being used for its stated purpose.

“AB 2663 would help enhance transparency and accountability on inclusionary housing in-lieu fees. The bill would require any local agency that collects inclusionary housing in-lieu fees to provide annual reports on how much was collected in fees and if the fees have been intended to be used for a project, if any. Additionally, the bill would require a local agency to provide a five-year report on the amount of inclusionary housing fees that have been collected over and what projects the funds have been spent on. By making this information

available and accessible, this bill will help to ensure that fees collected in the development process are well accounted for and implemented effectively during our housing affordability crisis.”

10) **Arguments in Opposition.** None on file.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Habitat for Humanity

Opposition

None on file

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