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**SENATE COMMITTEE ON HOUSING**  
**Senator Nancy Skinner, Chair**  
**2023 - 2024 Regular**

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**Bill No:** AB 2663 **Hearing Date:** 6/4/2024  
**Author:** Grayson  
**Version:** 5/2/2024  
**Urgency:** No **Fiscal:** No  
**Consultant:** Alison Hughes

**SUBJECT:** Inclusionary housing: fees: reports

**DIGEST:** This bill requires local agencies that collect inclusionary housing in-lieu fees to post on their website specified information about the amount of fees collected and how they were spent.

**ANALYSIS:**

*Existing law:*

- 1) Authorizes local governments to impose inclusionary housing requirements on residential developments in the form of on-site inclusionary housing requirements, through the payment of inclusionary housing in-lieu fees, or through off-site construction of affordable units, or both.
- 2) Establishes the Mitigation Fee Act, which requires a local agency to do all of the following:
  - a) When establishing, increasing, or imposing a fee on a development project, the local agency must:
    - i) Identify the purpose of the fee;
    - ii) Identify the use to which the fee is to be put;
    - iii) Determine how there is a nexus between the fee's use and the type of development project on which the fee is imposed; and
    - iv) Determine how there is a nexus between the need for a public facility and the type of development project on which the fee is imposed.
  - b) After a fee is collected, the local agency must:
    - i) Deposit development project fees collected in a separate capital facilities account to avoid commingling with other funds, and use these fees, including any interest earned, solely for their intended purpose;

- ii) Provide annual public reports detailing fee information, including balances, collections, expenditures, and specific improvements funded by the fees;
  - iii) Hold a public meeting to review the annual report, with notice provided to interested parties;
  - iv) Make specified findings with respect to any unexpended portions of accounts established under the Act every five years, whether the funds are committed or uncommitted; and,
  - v) Complete the financing of public improvements once sufficient funds have been collected.
- 3) Requires a city, county, or special district that has an internet website to make information available on its internet website, including the current schedule of fees, exactions, and affordability requirements imposed by that city, county, or special district, applicable to a proposed housing development project.

**This bill:**

- 1) Defines “inclusionary housing in-lieu fee” as an alternative means of compliance with an inclusionary housing requirement.
- 2) Requires, beginning on January 1, 2026, a local agency that collects inclusionary housing in-lieu fees to publish annually on its web site both of the following:
  - a) The amount of inclusionary housing in-lieu fees collected in the previous year.
  - b) Whether the fees are intended to be used for any project.
- 3) Requires, beginning on January 1, 2026, and every five years thereafter, a local agency that collects inclusionary housing in-lieu fees to post on its internet web site both of the following:
  - a) The amount of inclusionary housing in-lieu fees collected in the past five years.
  - b) The projects that the inclusionary housing in-lieu fees were spent on.

**COMMENTS:**

- 1) *Author’s statement.* “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.”

- 2) *Mitigation Fee Act.* When approving development projects, counties and cities can require the developers to mitigate the project's effects by paying impact fees. Impact fees stem from a straightforward principle: new developments should pay for their impacts on the community and the burden they impose on public services.

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; and,
- d) Determine a reasonable relationship between the public facility's need and the development.

Other requirements in the Mitigation Fee Act ensure that development fees are appropriately levied and spent, including that a local agency must:

- a) Hold at least one open and public meeting prior to levying a new fee or increasing an existing one;
- b) Deposit and spend the fees within five years of collecting them; and,
- c) Refund fees or make specific findings on when and how the fees will be spent for construction, if the fees are not spent within five years of collection.

- 3) *Inclusionary housing policies.* Article XI, Section 7 of the California Constitution grants each city and county the power “to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” This is generally referred to as the police power of

local governments. The Planning and Zoning Law is a general law that sets forth minimum standards for cities and counties to follow in land use regulation, but the law also establishes the Legislature's intent to "provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters."

Using this police power, many cities and counties have adopted ordinances, commonly called "inclusionary zoning" or "inclusionary housing" ordinances, that require developers to ensure that a certain percentage of housing units in a new development be affordable to lower-income households. These ordinances vary widely in the percentage of affordable units required, the depth of affordability required, and the options through which a developer may choose to comply. Most, if not all, of such ordinances apply to both rental and ownership housing.

Additionally, state law, through the passage of AB 1505 (Bloom, Chapter 376, Statutes of 2017) reaffirmed the power of local governments to mandate the inclusion of affordable housing units in new rental projects, subject to certain conditions. AB 1505 authorized local governments to impose inclusionary housing requirements on residential developments in the form of on-site inclusionary housing requirements, through the payment of inclusionary housing in-lieu fees, or through off-site construction of affordable units, or a combination of these options.

- 4) *Increasing transparency.* According to a recent article in the *San Jose Spotlight*, the need for transparency in the allocation and expenditure of inclusionary housing in-lieu fees collected by local governments is underscored by a recent example of in Cupertino<sup>1</sup>. In that city, a third party investigation discovered that an "accounting error" led to the misuse of over \$100,000 from the City's \$5.2 million below-market-rate housing fund to pay legal fees related to a recent housing lawsuit.

This bill would require local governments that collect inclusionary housing in-lieu fees and post that information on their web site. Specifically, this bill would require annual reporting, beginning January 1, 2026 to identify how much in fees was collected the prior year and the intended use for those funds, as well as a report every five years documenting use of the funds over that time-period.

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<sup>1</sup> Annalise Freimarck. *Cupertino spent affordable housing funds on lawsuit.* San Jose Spotlight. March 26, 2024. Accessible here: <https://sanjosespotlight.com/cupertino-spent-affordable-housing-funds-on-lawsuit/>

5) *Double referral.* This bill was also referred to the Local Government Committee.

**RELATED LEGISLATION:**

**AB 602 (Grayson, Chapter 347, Statutes of 2021)** — established several new requirements for local governments in connection with adopting and imposing fees and exactions, as specified.

**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. 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 includes residential rental units affordable to lower- and moderate-income households.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: No    Local: No

**POSITIONS:** (Communicated to the committee before noon on Wednesday, May 29, 2024.)

**SUPPORT:**

California Apartment Association  
Habitat for Humanity California

**OPPOSITION:**

None received.

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