



Housing Advisory Commission

ACTION CALENDAR  
October 15, 2013

To: Honorable Mayor and Members of the City Council  
From: Housing Advisory Commission  
Submitted by: Stephen Murphy, Chair, Housing Advisory Commission  
Subject: Housing Advisory Commission Recommendation Regarding Affordable Housing Impact Fee

RECOMMENDATION

Accept the proposed changes to the Affordable Housing Mitigation Fee provisions of Berkeley Municipal Code Section 22.20.065, as submitted to Council on July 16, 2013, with certain exceptions regarding 1) the process for determining affordability levels for in-lieu units; 2) correction of certain language included in Paragraph 2.a; 3) the deadline by which applicant developers must pay the Mitigation Fee; 4) the appropriate index for annual adjustments to the Mitigation Fee; and 5-6) actions related to creating a City-maintained waiting list for below-market rate units built pursuant to the Mitigation Fee Ordinance.

SUMMARY

At its July 11, 2013 meeting, the HAC considered the pending Council-proposed changes to Berkeley Municipal Code (BMC) Section 22.20.065, relating to affordability requirements and implementation of the Affordable Housing Mitigation Fee, and submitted its recommendations, as further described below (see also Attachment A, the HAC's memo to the Honorable Mayor and Members of the City Council).

FISCAL IMPACTS OF RECOMMENDATION

Unknown.

CURRENT SITUATION AND ITS EFFECTS

On June 14, 2011, Council adopted Ordinance No. 7,192-N.S., which amended BMC Chapter 22.20 to authorize adoption of an Affordable Housing Mitigation Fee ("Fee"). As further defined by Council action, the Mitigation Fee requires that developers of rental housing mitigate the need for affordable housing that new developments generate by taking certain actions, including:

- Paying an affordable housing mitigation fee to the City. The per-unit value of the Fee is currently \$20,000, and is set to remain at that level for unapproved permit applications until October 16, 2014, at which time it is scheduled to revert to \$28,000. The study by which the Fee level is derived, the 2010 Bay Area

Economics Nexus Study (“Nexus Study”), determined that up to \$34,000 per unit is appropriate to mitigate the impact of new market-rate housing.

- Designating, in lieu of a Fee payment, 10% of market-rate units as permanently rent-restricted units affordable to households earning up to 50% of Area Median Income (“AMI”). Applicants may also propose a combination of in-lieu units and Fee payment.

### BACKGROUND

On July 16, 2013, Councilmembers Jesse Arreguin and Laurie Capitelli submitted proposed changes to the Affordable Housing Mitigation Fee Ordinance, Berkeley Municipal Code (BMC) Section 22.20.065. The item was held over, but the Housing Advisory Commission discussed the Councilmembers’ proposed amendments at its July 11, 2013 regular meeting.

### RATIONALE FOR RECOMMENDATION

The HAC’s response to the proposed amendments are as follows:

Proposal #1: BMC Section 22.20.065.C.2 currently states that a developer applicant (Applicant) may elect to avoid the mitigation fee by designating 10% of proposed market-rate units as permanently restricted housing affordable to Very Low-Income households, which is defined as households with gross incomes not exceeding 50% of Area Median Income (AMI).

*Proposed Amendment:* Change the 50% percentage “to more closely match the findings of the Bay Area Economics Nexus study”, and require that half of the in-lieu units be rented to households earning up to 50% of AMI and half of the units to be rented to households at a mix of incomes ranging between 30% and 80% of AMI.

The proposal further requested language clarifications: that affordability levels refer to gross rent, with actual tenant-paid rents equal to gross rent less a utility allowance.

HAC Recommendation #1: The HAC found that the Nexus Study did not necessarily support a finding that half of in-lieu units should be rented at 50% of AMI and the other half at 30%-80% affordability levels.

The HAC supports 1) changing percentages to more closely match the Nexus Study findings, but only if the Nexus Study is updated; and 2) allowing, as an alternative, a range of affordability levels (30%-80%), but only if Applicants achieve an average affordability level for a project’s in-lieu units of 50% of AMI.

HAC Recommendation #2: Correct Paragraph 2.a of the July 16, 2013 proposal by inserting the words “lack of”, as follows: “What information is requested of the applicant to provide “satisfactory factual proof” that the lack of the waiver/reduction is a “hardship”?”

Proposal #3: BMC 22.20.065.C.1 states that Affordable Housing Mitigation Fees should be paid prior to issuance of a Certificate of Occupancy (COO).

*Proposed Amendment*: Allow the City and Applicant to negotiate a repayment term for the Mitigation Fee, rather than requiring full repayment prior to issuance of COO.

HAC Recommendation #3: Mitigation Fees should be paid at COO, but, under “extraordinary circumstances”, they may be paid at a later time.

Proposal #4: The current Affordable Housing Mitigation Fee is not indexed for inflationary increases.

*Proposed Amendment*: Adjust the Mitigation Fee annually by either the San Francisco Bay Area Consumer Price Index or the Northern California Construction Cost Index.

HAC Recommendation #4: Adjust the Fee annually according to either the San Francisco Bay Area “Shelter-Only” Consumer Price Index or the Northern California Construction Cost Index.

Proposal #5: The City currently does not maintain a formal waiting list of eligible low-income households to which Applicants are required to conduct outreach and marketing for in-lieu rentals.

*Proposed Amendment*: Establish a waiting list, maintained by either the City or its designated agent, of eligible low-income households, and require Applicants to use the list when renting units.

HAC Recommendation #5: The HAC encourages, but would not require, a City-maintained waiting list for in-lieu units.

Proposal #6: Requests that the City Manager propose a process for monitoring affordable units built under the Affordable Housing Mitigation Fee Ordinance, including a determination of whether a designee of the City (“such as the Rent Board or a non-profit developer”) could process income eligibility documents, rental rates, and vacancy information submitted by Applicants. The recommendation further proposes that the City should consider amending the Ordinance to require an annual monitoring fee so that the costs of tenant selection and eligibility monitoring do not add to City costs.

HAC Recommendation #6: The HAC requests that the City Manager research the use of a City-maintained waiting list.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

VOTE

The motion on the recommendations listed above passed unanimously:

M/S/C (Murphy/Tregub) Ayes - Casalaina, Feller, Kingeter, Murphy, Sawicki, Skjerping, Soto-Vigil, Tregub, Wolfe; Noes - None; Absent - None.

CITY MANAGER

See companion report.

CONTACT PERSON

Kate Hartley, Senior Community Development Project Coordinator, HHCS, 981-5411

Attachments:

1: Memorandum: Comments on Proposed Changes to the Affordable Housing Mitigation Fee Ordinance (dated May 21, 2013)

September 10, 2013

TO: Honorable Mayor and Members of the City Council

FROM: City of Berkeley, Housing Advisory Commission

RE: Comments on Proposed Changes to the Affordable Housing Fee Ordinance  
(Dated May 21, 2013)

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At its July 11, 2013 meeting, the HAC discussed proposed changes to the Affordable Housing Fee Ordinance proposed by Councilmembers Arreguín and Capitelli. Below represents recommendations made by a majority of the Housing Advisory Commissioners.

- 1) Since proposed changes to the Housing Mitigation Fee Policy included an exploration of the “changes to the depth of affordability of affordable units an applicant can elect to build on-site in lieu of paying the Affordable Housing Mitigation Fee,” the HAC proposed the following changes.
  - a. Changing the percentages to more closely match the findings of the Bay Area Economics Nexus study, on the condition that the BAE Nexus Study is updated.<sup>1</sup>
  - b. Alternatively, the HAC supports a proposal that requires projects to achieve an overall average of 50% of AMI for on-site units built in lieu of paying the fee.
- 2) Section 2.a of the Proposal needs to be corrected to state: “What information is requested of the applicant to provide ‘satisfactory factual proof’ that the lack of the waiver/reduction is a ‘hardship’”. (“Lack of” added.)
- 3) Mitigation Fees should be paid at Certificate of Occupancy, but, under “extraordinary circumstances”, they may be paid later. [Note that there was extended discussion on this issue, including the length of any extension granted, but the HAC did not condition the motion beyond what is provided above.]
- 4) The Fee should be adjusted annually according to either the Construction Cost Index for Northern California or the “Shelter-Only” Consumer Price Index for the San Francisco Bay Area.

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<sup>1</sup> The actual vote at the meeting was based on the action item prepared by Councilmembers Jesse Arreguín and Laurie Capitelli. This proposal assumed that the Nexus Study found that housing demand based on new residential construction was as follows: Half of the new households moving to Berkeley would require housing affordable at 50% AMI and the remainder would require units between 30% and 80% AMI. Since this is not a correct interpretation of the Nexus Study Table 4.3 and since the HAC also recommended that the Nexus Study should be updated, this memo presents the recommendation that the Nexus Study be updated, and that one option to determine income targeting would be this updated study.

- 5) Regarding the Proposal's directive to establish a City-maintained waiting list for eligible low-income households, the HAC encourages but would not require a City-maintained waiting list.
- 6) The HAC requests that the City Manager research the use of a City-maintained wait list.

**Table 4.3: Employment and Household Generation by Income Level**

NAICS Code	Industry	Total Jobs (a)	Estimated Jobs by Percent of AMI (b)				
			Up to 30% AMI	30 to 50% AMI	50 to 65% AMI	65 to 120% AMI	Above 120% AMI
11-21-22	Agriculture, Forestry, Fishing & Hunting, Mining, Utilities	0.2	0.0	0.0	0.0	0.1	0.1
23	Construction	0.4	0.0	0.0	0.0	0.1	0.1
31-33	Manufacturing	0.2	0.0	0.0	0.0	0.1	0.1
42	Wholesale Trade	3.1	0.3	0.2	0.2	1.0	1.4
44-45	Retail Trade	14.6	1.4	1.5	1.1	5.0	5.6
48-49	Transportation & Warehousing	1.6	0.1	0.2	0.1	0.6	0.6
51	Information	0.6	0.0	0.0	0.0	0.2	0.3
52	Finance & Insurance	3.6	0.1	0.2	0.2	1.1	2.0
53	Real Estate & Rental & Leasing	2.4	0.2	0.2	0.2	0.7	1.1
54-55	Professional & Technical Services; Management of Companies & Enterprises	3.0	0.1	0.1	0.1	0.7	1.9
56	Administrative & Waste Services	2.6	0.4	0.4	0.2	0.9	0.7
61	Educational Services	2.9	0.3	0.2	0.2	0.9	1.3
62	Health Care & Social Assistance	10.9	0.9	1.0	0.8	3.5	4.7
71-72	Arts, Entertainment & Recreation; Accommodation & Food Services	10.8	1.5	1.5	1.0	3.7	3.0
81	Other Services, except Public Administration	6.4	0.8	0.9	0.6	2.2	1.9
92	Public Administration	0.5	0.0	0.0	0.0	0.2	0.2
<b>Total Jobs</b>		<b>63.8</b>	<b>6.2</b>	<b>6.6</b>	<b>4.7</b>	<b>21.0</b>	<b>25.2</b>
<b>Number of Households (a)</b>		<b>36.5</b>	<b>3.5</b>	<b>3.8</b>	<b>2.7</b>	<b>12.0</b>	<b>14.4</b>

**Notes:**

(a) Total Jobs is output of IMPLAN model, and shows direct, indirect, and induced employment generated by household spending. Columns to right may not sum to Total Jobs due to rounding.

(b) Based on 2009 HCD Income Limits.

(c) Average number of workers per worker household calculated for Alameda County based on American Community Community Survey data, 2006-2008.

Wage and Salary Workers 710,675  
 Households with Wage or Salary Income 406,511  
 Avg. Workers per Household 1.7

Sources: American Community Survey, 2008; US Census, Public User Microdata Sample, 2000; CA Department of Housing and Community Development, 2008; BAE, 2010.

