



Office of the City Manager

ACTION CALENDAR

October 15, 2013

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Jane Micallef, Director, Health, Housing & Community Services

Subject: Housing Advisory Commission Recommendation Regarding Affordable Housing Impact Fee

RECOMMENDATION

Accept the Housing Advisory Commission's recommendation numbers 2 (correcting a minor wording error) and 4 (indexing the fee); and accept staff's recommendations numbers 1 (option to provide a range of affordability levels for in-lieu units), 3 (payment of fee required prior to Certificate of Occupancy); 5 and 6 (enhanced access and outreach for marketing of affordable units).

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 the HAC's companion report to this item).

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 and City Manager’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 Response:* 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 does support 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.

*CM Response:* Staff recommends giving Applicants the option of providing all in-lieu units at the 50% affordability level or allowing them to designate in-lieu units at affordability levels between 30% and 80% of AMI, so long as the in-lieu units’ average affordability level is 50% of AMI. Applicants opting for the second method of setting affordability must designate units’ AMI percentages prior to the commencement of construction so that the City is assured that the 50% average will be achieved.

This recommendation deviates slightly from that of the HAC. Though the HAC recommends matching in-lieu affordability levels to an updated Nexus Study, staff finds the current conclusions of the Nexus Study, as bolstered by findings of the State's Regional Housing Needs Allocation for the San Francisco Bay Area, to be compelling. Both documents demonstrate the need for a range of affordability levels in new housing. Applying the range of 30% of 80%, with an average of 50% of AMI, provides flexibility to Applicants and ensures that needy working households will have access to in-lieu units.

Proposal #2: 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 Response*: Mitigation Fees should be paid at COO, but, under "extraordinary circumstances", they may be paid at a later time.

*CM Response*: Staff recommends requiring Applicants to pay Fees at COO. This recommendation eliminates the "extraordinary circumstances" waiver proposed by the HAC. Applicants have the opportunity to apply to the City for a waiver of the Fee requirements under BMC 22.20 if they can establish hardship. However, once the City has determined that imposition of a Fee is appropriate, the payment deadline should not extend beyond COO, when construction loans convert to permanent financing. Doing so would diminish the likelihood that the Applicant will secure the lump sum necessary to pay the Fee and will diminish the likelihood that the City will be able to fully collect the fee.

Proposal #3: 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 Response*: Adjust the Fee annually according to either the San Francisco Bay Area "Shelter-Only" Consumer Price Index or the Northern California Construction Cost Index.

*CM Response*: Staff agrees with the HAC's recommendation.

Proposal #4: 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 Response:* The HAC encourages, but would not require, a City-maintained waiting list for in-lieu units.

*CM Response:* See below.

Proposal #5: 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 Response:* The HAC requests that the City Manager research the use of a City-maintained waiting list.

*CM response to Proposals #4 and #5:* Staff notes that the City currently has an active program in place for monitoring in-lieu units, as described in the Informational Report provided to Council and also held over to the October 15, 2013 City Council meeting.

Based upon staff’s ongoing monitoring and direct communication with developers of below-market rate units, staff is confident that these units are rented to eligible households. However, there may be avenues for improving outreach and marketing to low- and lower-income Berkeley households regarding these housing opportunities. Staff recommends, as one means of achieving this goal, that a condition of approval (or some other mechanism) be added to the regulatory agreements of developers opting to build in-lieu units that requires advertising the units’ availability on the City’s website. City staff could supplement this on-line, easily accessible information with “How-To” steps any interested renter can take to pursue available below-market units. Such an approach would improve the units’ visibility while also avoiding any confusion that may occur with competing waiting lists.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

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