


Office of the City Manager

ACTION CALENDAR  
July 12, 2005

To: Honorable Mayor and  
Members of the City Council  
From:  Phil Kamlarz, City Manager  
Subject: Administrative Fees – Inclusionary Housing Program

RECOMMENDATION

Conduct a public hearing and upon conclusion:

- 1) Adopt first reading of an Ordinance adding Berkeley Municipal Code (BMC) Section 23C.12.100 authorizing the City Council to set fees by Council Resolution, and
- 2) Adopt a Resolution, to be effective upon the effective date of the Ordinance, approving the Inclusionary Housing Program administrative fees specified in the Resolution.

FISCAL IMPACTS OF RECOMMENDATION

The proposed fee would generate income for the exclusive purpose of covering City costs incurred in the administration of the inclusionary housing program and could not be used for any other purpose. Currently, the City does not obtain any fees for the administration of the inclusionary program.

The proposed fees and projected annual revenues are as follows:

**Proposed Fees and Projected Revenues**

Task	Fee	Projected Volume	Annual Projected Revenue
Selection of Inclusionary Units & Preparation of Inclusionary Agreement with Developer	\$350/project	12 projects/yr.	\$4,200
Rental Units – Monitoring of Compliance	\$60/unit/yr.	200 units/yr.	\$12,000
Condominium Unit Sales Monitoring of Compliance	\$300/sale	20 sales/yr.	\$6,000
Total			\$22,200

The foregoing projections are subject to the qualification that the number of inclusionary agreements and the number of condominium sales may vary substantially from year to year. Therefore, the required administrative time and corresponding administrative fees may vary substantially from year to year.

The proposed fee for monitoring inclusionary rental units would be charged to building owners, but could be passed through to tenants. The fees for monitoring sales of inclusionary condominium units would be charged to purchasers of the individual units.

#### CURRENT SITUATION

Pursuant to the City's Inclusionary Ordinance (BMC. Chapter 23C.12), twenty percent (20%) of all units in new construction projects must be made available at an affordable rent or sales price and can only be rented or sold to households meeting specific income ceiling criteria. Units that are purchased pursuant to the inclusionary program are subject to resale restrictions which are administered by the City.

As a part of the implementation of the Inclusionary Housing Program, the Housing staff:

1. determines which units in a project shall be inclusionary and the rent and sales prices for those units,
2. drafts agreements with the developer and the purchasers of individual inclusionary units which are recorded,
3. reviews and determines the eligibility of applicants to rent or purchase inclusionary units,
4. reviews annual reports from the owners of rental properties on the status of inclusionary rentals and tenants, and
5. periodically surveys tenants on owner compliance with required rent levels.

#### Number of Inclusionary Units

As of January 2005, 152 inclusionary units have been set aside and permits have been obtained for the construction of apartment buildings which would contain about two hundred more inclusionary units.

## BACKGROUND

The primary tasks associated with the administration of the inclusionary program are described in the following discussion.

### **Administrative Tasks – Inclusionary Housing Program**

#### **A. Selection of Inclusionary Units and Drafting of an Inclusionary Agreement**

**Description:** Under the inclusionary ordinance, inclusionary units must be dispersed within a project in a manner that provides comparability between the inclusionary units and the other units in the project. The selection of inclusionary units is subject to review and approval by City staff.

In addition, the developer must enter into an inclusionary agreement with the City. While substantial portions of the agreement may be standardized, particular terms of the agreement – including the selection of units and/or tenants and the establishment of sales price ceilings - often have to be tailored to the particular project and/or particular conditions arising out of density bonus requirements or other requirements for the specific project.

**Costs:** On the average it takes one hour of Senior Planner time to review developer proposals and meet with a developer in order to select inclusionary units and three hours of Senior Planner time to develop an inclusionary agreement. (4 hrs. @ \$77.14/hr = \$308.56) (The cost for senior planner time includes pay, fringe benefits, departmental indirect costs, and city wide indirect costs.) In addition one hour of Deputy City Attorney time is needed in order to review an inclusionary agreement.

**Collection of Fee:** The proposed fee for the preparation of the inclusionary agreement would be collected by the Planning Department in conjunction with fees for use permits.

#### **B. Rental Units – Monitoring of Compliance with Inclusionary Program**

**Description:** The proposed fee would apply to existing projects as well as new projects.

Each time a unit becomes vacant and is re-rented, City staff must make a determination as to the eligibility of one or more applicants. In order to make the determination it is necessary to review tax returns and other documents setting forth the income situation of the applicant. In addition, staff reviews annual reports by each building owner.

Other tasks include the provision of information on current standards and annual changes in the inclusionary rental ceilings and household income limits.

**Costs:** On the average it takes one hour of Senior Planner time to process applications and make determinations on the eligibility of a tenant for an inclusionary unit . Such determinations must be made for about one-half of all inclusionary units in a year. (Annual cost – 0.50 hr per inclusionary unit.) In addition, the Senior Planner time to conduct an annual review of the eligibility of each tenant will average about 0.25 hour per unit and it will take 0.1 hour per unit (8 hrs per year for all units) to prepare an annual report on compliance with the inclusionary rental standards. (Total Cost – 0.85 hr/per year/unit \$77.14/hr = \$65.57/year/unit)

**Assessment of Fee:** Owners would be able to pass this fee through to tenants on a monthly pro-rated basis. Therefore, owners would not be required to incur a cost that was not agreed to when they entered into inclusionary agreements and tenants would share in the cost of administering a program which was for their benefit.

### **C. For Sale Units – Monitoring of Compliance with Inclusionary Standards**

**Description:** Developers of new projects are routinely obtaining underlying condominium maps even if the project will start as a rental project. Furthermore, there has been a shift from the construction of rental projects to construction of for-sale projects as condominium values have soared while market levels rents have declined in the past few years. Also, several developers have indicated that they may make proposals for large condominium projects. In any case, it is likely that up to one hundred inclusionary units may be sold within the next five years.

In the case of each sale, the purchaser must be approved by City staff and an inclusionary sales agreement must be prepared.

**Costs:** On the average it takes four hours of Senior Planner time to evaluate the eligibility of potential purchasers of an inclusionary unit, review the proposed sale terms in order to insure that they comply with the governing inclusionary agreement and to develop an inclusionary agreement on the resale and use of the inclusionary unit. (4 hrs. @ \$77.14 = \$308.56) plus one hour of Deputy City Attorney time to review an inclusionary agreement.

**Assessment of Fee:** This fee would be paid by purchasers of units at the close of escrow.

### RATIONALE FOR RECOMMENDATION

The inclusionary housing program provides substantial financial benefits to the beneficiaries of the program who are provided with newly constructed units at a cost which is substantially below market levels. The proposed fees provide for the payment of the cost of the program by

the beneficiaries at a cost that is nominal, while enabling the City to recoup its administrative costs.

There is no systematic data on the fees that are collected by other cities for monitoring inclusionary programs. However, two examples are compared with the proposed fee for Berkeley:


**Inclusionary Program Monitoring Fees  
San Diego, Concord, Berkeley (proposed)**

	Initial Set up Fee	Annual Fee Rental Units	Sales Transaction Monitoring Fee
San Diego	\$500	\$65/unit	none
Concord	none	\$15/unit	\$200
Berkeley (proposed)	\$350	\$60/unit	\$300

CONTACT PERSON

Kenneth Baar, Senior Planner - 981-5420

Approved:

  
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Stephen Barton, PhD, Housing Director

- Attachments:
- 1: Ordinance
  - 2: Resolution
  - 3: Public Notice

Attachment 1

ORDINANCE NO.           – N.S.

ADDING BERKELEY MUNICIPAL CODE (BMC) Section 23C.12.100, regarding administrative fees.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Section 23C.12.100 is added to Chapter 23C.12 as follows:

**23C.12.100. Fees**

The City Council, by resolution, may establish fees for the administration of this chapter.

Attachment 2

RESOLUTION NO. \_\_\_\_-N.S.

ADOPTING FEES FOR ADMINISTRATION OF INCLUSIONARY HOUSING PROGRAM

WHEREAS, Berkeley Municipal Code (BMC) Section 23C.12.100 authorizes the City to charge fees for the administration of inclusionary agreements pursuant to the Inclusionary Housing Ordinance (BMC Chapter 23C.12),

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley adopts the following fees for the administration of its Inclusionary Housing Ordinance:

- Selection of inclusionary units, and preparation of an Inclusionary agreement with developer \$350
- Review of eligibility of individual purchasers of inclusionary unit, drafting of inclusionary agreement To be paid by unit purchaser \$300
- Inclusionary rental units, annual monitoring fee \$ 60/unit/year

