




Office of the City Manager

ACTION CALENDAR

November 29, 2005

To: Honorable Mayor and  
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Stephen Barton, Housing Director

Subject: Administrative Fees – Inclusionary Housing Program

RECOMMENDATION

- A) Adopt first reading of an Ordinance adding Berkeley Municipal Code (BMC) Section 23C.12.100, which authorizes the City Council to set fees by Council Resolution.
- B) Adopt a Resolution, to be effective upon the effective date of the Ordinance, approving the Inclusionary Housing Program administrative fees specified in the Resolution and establishing a new fund for the Inclusionary Housing Program.

SUMMARY

The proposed fee ordinance and fee resolution provide for fees that recover costs associated with performing tasks which are undertaken in the course of the administration of the inclusionary program. The proposal provides that the fees shall be passed through to tenants and purchasers of inclusionary units.

On July 12, the Housing Department recommended that the City Council adopt monitoring fees for the administration of the inclusionary program. At that meeting, the Council held the public hearing, but took no action, as several members proposed changes to the proposal and requested additional information. This report includes the discussion contained in the July 12 report, additional information pursuant to the requests of the July 12 meeting, and some revisions based on the additional information. The proposed resolution has been modified to exempt specified households from the proposed monitoring fees.

Pursuant to the City's Inclusionary Housing Ordinance (BMC Chapter 23C.12), 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 project developers and with 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,
5. Periodically surveys tenants on owner compliance with required rent levels.

FISCAL IMPACTS OF RECOMMENDATION

Current Revenue – None

The 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.

**Projected Annual Revenues**

<b>Monitoring of Rental Units (@\$60/unit/year) (Estimate 160 units within a year)</b>	<b>\$9,600</b>
<b>Selection of inclusionary units, and Preparation of an Inclusionary agreement with developer (@ \$350 per project (Estimate: 12 projects per year)</b>	<b>\$4,200</b>
<b>Sales of Condominium Units (@\$300/unit) (Estimate: 30 units per year)</b>	<b>\$9,000</b>
<b>Total</b>	<b>\$22,800</b>

Revenues will go into a new dedicated fund for Inclusionary Housing Program and all expenditures related to this program will be shifted to the new fund.

BACKGROUND

**Number of Inclusionary Units**

Currently, there are approximately 150 inclusionary rental units and 40 inclusionary condominium units within the City.<sup>1</sup>

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<sup>1</sup> The totals and projections in this report exclude 51 moderate income (120% of AMI) “inclusionary” rental units. These units, which are subject to an inclusionary agreement with the City, are all in one project with a special agreement. The project also includes 20 low and very low income units that are counted.

Monitoring of the moderate income units would not provide significant benefits since moderate income inclusionary rent ceilings exceed market rents.

The number of low and very low income inclusionary units that are in the pipeline (either within a project with an approved use permit or within a proposed project), exceeds the number of low and very low income inclusionary units constructed since the inception of the program in 1986.

**Existing Units and Units in Pipeline**

<b>Existing Inclusionary Units – Rental</b>	<b>150</b>
<b>Existing Inclusionary Units - Owner Occupied Condominiums</b>	<b>40</b>
<b>Inclusionary Units in Projects with a Use Permit</b>	<b>129</b>
<b>Inclusionary Units in Projects with Pending Applications</b>	<b>91</b>

Currently a majority of the rental units are restricted to occupancy by low income households, rather than very low income households.

**Existing Inclusionary Units  
Rental**

Very Low Income (50% AMI)	61
<u>Low Income (81% AMI)</u>	<u>89</u>
Total	150*

However, under the current ordinance half of all inclusionary units in new projects must be affordable to very low income households.

Rentals through Sec. 8 program - approximately 80

**Pass through of Rental Unit Monitoring Fees to Inclusionary Tenants**

Staff proposed a monitoring fee of \$60/year (\$5/month) that could be passed through to tenants. If the fee could not be passed through to tenants it could not be made applicable to existing units since it would constitute an additional burden on developers that was not agreed to by them at the time they agreed to comply with inclusionary housing requirements.

In order to place the \$60 per year fee in perspective, staff would like to note that the income ceilings for eligibility for occupancy of inclusionary units are comparable to the average income levels of households that occupy rent controlled units. Tenants of rent controlled units cover the costs of annual Rent Stabilization Board registration fees of \$154 per year.<sup>2</sup>

**Exemptions from Monitoring Fees**

Council members expressed concern about the affordability of the proposed fee.

<sup>2</sup> Tenants are not separately billed for these fees. However, until last year, these fees were taken into account by the Rent Board account in computing annual allowable increases. Under the ordinance adopted last fall, annual increases were tied to 65% of the percentage increase in the CPI.

The fee would not be applicable to units rented through the Section 8 and Shelter Plus care programs because federal regulations prohibit the imposition of a monitoring fee on these units. Also, affordability monitoring is already done as a part of these programs. Staff proposes that units occupied by households with members who receive Social Security, S.S.I., or Temporary Assistance for Needy Families (TANF) also be exempted from the monitoring fee.

About 80 of the 150 inclusionary rental units are rented through the Section 8 program. Most of the Section 8 rentals have been made by one developer (Panaromic Interests) who chooses to rent through this program and has rented “low” as well as “very low” income units through the program.

Owners are provided with substantial incentives to undertake rentals pursuant to the Section 8 program. They may charge “fair market rents” for Section 8 rentals, which are about \$400 per month higher than the rents otherwise authorized for “very low” income units pursuant to the inclusionary ordinance. However, developers other than (Panaromic Interests) have generally preferred to rent units that are designated for “very low” income occupancy at levels affordable to “very low” income households without a subsidy.<sup>3</sup>

Half of all inclusionary rental units must be rented to “low income” households. Income ceilings for these households are: one person - \$46,050, two persons - \$52,600; four persons - \$65,750. Usually, the other half of the units in a project must be rented to “Very low income” households. Income ceilings for these households are: one person - \$28,800, two persons - \$32,900; four persons - \$41,100. The “very low” income levels are comparable to the average income levels for the general tenant population in Berkeley, as reported in the Census.

#### **Payment of the Fee for Monitoring Sales of Inclusionary Condominium Units**

Staff proposed that the fee for monitoring the sale of inclusionary units should be paid by purchasers. Council members suggested that the fee should be paid by the sellers of inclusionary units.

Staff would like to note that if the fee were paid by sellers it could not be made applicable to current owners of inclusionary units since it would be an obligation that was not agreed to at the time of purchase. Also, it is questionable as to whether it could be applied to projects that have already entered the pipeline, which will generate most of the administrative burden in the next few years.

Furthermore, in terms of an “equitable” allocation of the fee, it may be noted that the main benefits of ownership of an inclusionary housing unit are obtained by the owner when a unit is purchased at a reduced price. In contrast, a seller is relinquishing the benefits of inclusionary ownership rather than obtaining a substantial benefit, since resale prices are severely restricted

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<sup>3</sup> E.g. \$745 (gross rent) for a unit with between 400 and 599 square feet, and \$822 for a unit with between 700 and 849 square feet.

relative to gains in market values. Long term owners do obtain gains from the limited appreciation that is tied to the CPI and recapture of principal payments on the loan.

**Basis for Projections of Revenues from Monitoring Fee**

The amount of income that a monitoring fee would generate cannot be precisely projected.

It is not known what portion of the units in the “pipeline” will be completed and what portion will be sold as condominiums and what portion will be rental units. Typically, developers obtain underlying condominium maps and preserve their options until construction is completed. Therefore, it is not certain whether a project will start as a rental or condominium project until the completion of construction. In the past year, developers have moved towards selecting condominium sales over rentals due to soaring condominium prices.

In the alternative, some developers have indicated that they prefer to rent for ten years and then sell their units. The economic advantage of this option is that it enables a developer to avoid the substantial costs of insurance for construction defects (e.g. \$25,000 per unit). However, this saving has substantially less weight as condominium prices increase.

Currently, it appears that approximately one half of the units in the pipeline will be offered as rental units and that the other half will be sold as condominiums.

Also, not known is what portion of the rental units will be rented to Section 8 tenants or will fall within the proposed exemption for households receiving Social Security, SSI or TANF.

Condominium Sales: For the purpose of making revenue projections (see page 2 for revenue projections), it has been assumed that 110, about half of the 220 inclusionary units in the pipeline, will be sold as condominium units and that an average of 30 of those units will be sold in each of the following few years.

Rental Units: It is assumed that that within a few years there will be approximately 260 inclusionary rental units (current total of 150 plus approximately 110 in the pipeline). It is also assumed that approximately 100 units (20 of the new units in addition to 80 existing units) will be rented through the Section 8 program, leaving a total of about 160 that would be subject to the annual monitoring fee.

The revenue projections in this report 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.

## **Administrative Tasks – Description and Cost Projection**

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

Under the inclusionary ordinance, inclusionary units must be dispersed among the 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. 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.

On the average it takes a Senior Planner one hour to review developer proposals and meet with a developer in order to select inclusionary units and three hours 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.

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

### **Monitoring Rental Units**

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.

On the average it takes a Senior Planner one hour 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)

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.

**Monitoring Unit Sales**

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 towards 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 two years.

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

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.

This fee would be paid by purchasers of units at the close of escrow.

**Fees in Other Jurisdictions**

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

	Initial Set up Fee	Annual Fee Rental Units	Sales Transaction Monitoring Fee
San Diego	\$500	\$65/unit	
Concord		\$15/unit	\$200

CONTACT PERSON

Kenneth Baar, Senior Planner, Housing Department, 981-5420

Attachments:

- 1: Ordinance
- 2: Resolution

ORDINANCE NO. -N.S.

ADDING BERKELEY MUNICIPAL CODE SECTION 23C.12.100 REGARDING  
INCLUSIONARY HOUSING PROGRAM 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.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

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  
Units through Section 8 program, Shelter Plus program,  
(exclusions from fee: Sec. 8 & shelter plus care rentals,  
units with households receiving social security(SSI) or  
temporary assistance for needy families (TANF))

BE IT FURTHER RESOLVED that the Council shall establish a fund for the administration of the Inclusionary Housing Program.