

ORDINANCE NO. -N.S.

ADDING BERKELEY MUNICIPAL CODE SECTION 23C.12.035 AUTHORIZING COMPLIANCE WITH THE INCLUSIONARY HOUSING ORDINANCE THROUGH THE PAYMENT OF IN-LIEU FEES

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

Section 1. Section 23C.12.035 is added to Berkeley Municipal Code Chapter 23C.12 as follows:

Section 23C.12.035 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project

- A. Applicability. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees as set forth in this section, in-lieu of providing units that are not required to be provided at below market prices pursuant to Government Code Section 65915.
- B. Purpose. The fee shall be deposited in the City's Housing Trust Fund.
- C. Amount of Fee.
 - 1. The in-lieu fee shall be sixty two and a half percent (62.5%) of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.
 - 2. This fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5%.
 - 3. This fee shall only be applicable to units in a project that are counted in determining the required number of inclusionary units in a project and shall not be applicable to any units provided as a density bonus.
 - 4. In the event that the City Manager makes a determination that an actual sales price does not reflect the fair market value of a unit, the City Manager shall propose an alternate price based on the fair market value of the unit. In the event that the developer and the City Manager cannot agree on a fair market value the City Manager shall select an appraiser to carry out an appraisal of the unit and the appraised value shall be used as the market value.
- D. Calculation of Inclusionary Sales Price.
 - 1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee pursuant to this section shall be three (3) times eighty percent (80%) of the Area Median

Income (AMI) last reported as of the closing date of the sale of the unit, with the exception that if the developer has already been authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale price for the purposes of this section shall be the price permitted under that ordinance.

2. Area median income (AMI) shall be calculated in accordance with the affordability regulations established by the City Manager pursuant to Section 23C.12.090.

E. Time of Payment of Fee. The developer shall be required to pay the applicable in-lieu fee no later than the closing date of the sale of a unit as a condition of said closing.

F. Use Permit Obtained Prior to Adoption of This Section. This section shall apply to projects for which all required Permits have already been issued, as long as no units on those projects to which this section would apply have been sold.

Section 2. The proposed action is exempt from review under the California Environmental Quality Act based on Public Resources Code Section 21080(b)(8) and Guidelines Section 15378(b)(4).

Section 3. 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.