



Office of the City Manager

INFORMATION CALENDAR

September 19, 2006

To: Honorable Mayor and  
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning Department

Subject: Fee Deferral: Oxford Plaza and David Brower Center, 2200 Oxford

INTRODUCTION

The purpose of this report is to inform the Council that a request to defer building permit-related fees for Oxford Plaza and David Brower Center, located at 2200 Oxford, has been partially approved by the City Manager. This Information Item provides the Council with the opportunity to call up the item in accordance with Berkeley Municipal Code (BMC) Chapter 19.62.

CURRENT SITUATION AND ITS EFFECTS

As indicated in the attached letter dated July 14, 2006, John Clawson representing Oxford Street Development, LLC requested a deferral of plan check and building permit fees for the proposed Oxford Plaza Housing and David Brower Center project. The deferral was requested until issuance of a Final Certificate of Occupancy. The total estimated fees that were requested to be deferred follow, with more detail provided later in this report.

Oxford Plaza Housing:	\$ 1,057,215
David Brower Center:	<u>1,129,183</u>
Total:	\$ 2,186,398

The entire project qualifies for the BMC Chapter 19.62 provision that building permit-related fees can be waived or deferred for housing projects that include 25% of the units affordable to low and moderate-income households. The BMC allows the City Manager to take action on this type of request and requires the City Manager to notify the Council of his/her response to the request. The Council may review the City Manager's action and may grant, wholly or in part, or deny the request.

The City Manager partially approved the requested deferral. First, the fee deferral requests for most of the Brower Center building were not approved because the purpose of the BMC provision allowing fee deferrals is to provide an incentive for the production of affordable housing, and the Brower Center portion of the project does not include housing. However, because the housing developer is responsible for 27% of the fees for the commercial component of the project (which includes the first floor retail and surface parking for the residential building

and the David Brower Center and the below grade, public parking), the City Manager approved a 27% fee deferral for these portions of the Brower Center.

Second, the City does not generally defer plan check fees when an outside consultant prepares the plan check comments and must be paid by the City. Therefore, 80% of the plan check fee was not deferred, although payment was allowed to be postponed until building permit issuance, rather than application submittal, as is generally required. The traffic engineering fees, which also pay for plan check services by City staff, were similarly deferred only until building permit issuance. Finally, the remaining deferred fees were deferred until issuance of a Temporary Certificate of Occupancy, rather than a Final Certificate of Occupancy.

It should be noted that a fee waiver was not requested. City policy is that if a fee waiver is approved, funding needs to be provided from another source<sup>1</sup>. It is not unusual for fee deferrals to be provided for affordable housing projects. Approximately \$ 400,000 in deferred zoning and building permit fees from other projects is being tracked to ensure payment is made when due.

#### BACKGROUND

In December 2000, the City Council requested that the Planning Commission establish a process and that the City Manager assign appropriate staff to work with the Commission in the development of a Request for Proposals (RFP) and a feasibility study on possible underground parking on the Oxford Parking Lot. The City Council subsequently recommended that the Property become the home of the David Brower Center. After the RFP was sent to more than 100 interested parties in June 2002, the development team of Resources for Community Development (RCD) and Equity Community Builders (ECB) was unanimously selected.

Development of the property will involve the construction of a mixed-use development that will include 97 rental units of affordable family and workforce housing, retail space and approximately 41 parking spaces for the residential tenants housed in a six story building (the Oxford Plaza); an environmental center in a four-story building (the David Brower Center); and a below-grade parking garage which will include approximately 100 public parking spaces to replace the loss of the existing surface parking. The City Council approved the General Plan and Downtown Plan amendments that were needed for the project on July 25, 2005; the Zoning Adjustments Board approved the project on September 8, 2005.

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<sup>1</sup> Building permit fees pay for plan check, inspections, and services at the Permit Service Center and deposited in the Permit Service Center Fund. A \$1.2 million annual shortfall is expected in the Fund for FY 2007 with the available fund balance depleted by FY 2010. If fees are waived and no other funding source is provided, the cost of services is borne by other applicants and, potentially, the General Fund, which does not currently provide a subsidy to the Permit Service Center Fund.

On May 16, 2006, the Council adopted an ordinance, which authorized the City Manager to enter into a Disposition and Development Agreement (DDA) between the City of Berkeley and Oxford Street Development LLC. The DDA governs the terms of the transfer of City-owned property located on Oxford Street between Kittredge Street and Allston Way.

**POSSIBLE FUTURE ACTION**

If the City Council disagrees with the decision made by the City Manager to defer fees, the issue can be placed on a future Council agenda for discussion and possible reconsideration.

**FISCAL IMPACTS OF POSSIBLE FUTURE ACTION**

Detail on the estimated fees for Oxford Plaza and David Brower Center follows.

Type of Fee	Paid	Deferred Until BP Issuance	Deferred Until Temporary Certificate of Occupancy	Not Deferred (due at issuance of building permit)
Zoning (General Plan amendment, Use Permit, and environmental review)	\$ 27,214			
<b>Oxford Housing Project</b>				
Plan Check		\$ 228,814	\$ 57,204	
Traffic Engineering Fee		\$ 144,149		
Permit Fee			\$ 440,029	
Other Fees			\$ 187,019	
Sewer Connection (deferral not requested)				\$ 152,561
<b>TOTAL ESTIMATED FEES</b>		<b>\$ 372,963</b>	<b>\$ 684,252</b>	<b>\$ 152,561</b>
<b>David Brower Center</b>				
Plan Check			\$ 3,073	\$ 315,267
Traffic Engineering Fee				\$ 110,251
Permit Fee			\$ 23,638	\$ 455,936
Other Fees				\$ 210,838
Sewer Connection (deferral not requested)				\$ 40,000
<b>TOTAL ESTIMATED FEES</b>			<b>\$ 26,711</b>	<b>\$ 1,142,472</b>

CONTACT PERSON

Wendy Cosin, Deputy Planning Director, Planning Department, 981-7402

Attachments:

1: July 14, 2006 letter from Oxford Street Development, LLC

2: August 11, 2006 letter from City Manager

# Oxford Street Development, LLC

## Attachment 1

July 14, 2006

Mark Rhoades  
Planning and Development  
City of Berkeley  
2120 Milvia Street  
Berkeley, CA 94704

RE: 2200 Fulton Street - Oxford Plaza and David Brower Center – Request for Permit Fee Deferral

Dear Mr. Rhodes;

Oxford Street Development, LLC and Resources for Community Development respectfully request a deferral of all permit fees due to the City of Berkeley for the Oxford Plaza and David Brower Center (Project). We request that payment of fees be deferred until completion of construction and issuance of a Final Certificate of Occupancy for the Project.

The Project, as outlined below, provides a significant public benefit to the City of Berkeley:

- 97 Units of Affordable Workforce Housing
- David Brower Center
  - 33,000 square feet of office space for non-profit organizations
  - 7,400 square foot Conference and Educational Facility providing auditorium, meeting rooms, and gallery to public benefit organizations and the community.
  - 3,400 square foot restaurant at the corner of Oxford and Allston that demonstrates the benefits of sustainable and natural food production.
- 8,700 square feet of ground floor retail space activating Oxford Street.
- Below grade public parking

The following is a summary of estimated permit and impact fees requested to be deferred until project completion:

### **Oxford Plaza Housing:**

Plan Check Fee:	\$440,029
Permit Fee:	\$286,018
Title 24 Fee:	\$52,803
Title 24/Disabled:	\$52,803
Life/Safety Fee:	\$30,802
Technology Fee:	\$22,001
Sustained Dev. Fee:	\$26,410
SMIP Fee:	\$2,200

Traffic Engineering Fee:	\$144,149
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38 KEYES  
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415-561-6200  
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# Oxford Street Development, LLC

## David Brower Center, Retail, Parking:

Plan Check Fee:	\$318,340
Permit Fee:	\$489,754
Title 24 Fee:	\$58,770
Title 24/Disabled:	\$58,770
Life/Safety Fee:	\$34,283
Technology Fee:	\$24,488
Sustainable Dev. Fee:	\$29,385
SMIP Fee:	\$5,142

Traffic Engineering Fee: \$110,251

Section 23B.24.040.C of the Zoning Ordinance allows that the "City Manager may waive or defer the payment of Permit fees, if he or she finds that the project will provide significant public service or benefit, and that the waiver or deferral is necessary to make the project economically feasible to construct or establish". The Oxford Plaza and David Brower Center clearly provide significant public benefit in the form of affordable workforce housing, office and educational facilities for non-profit organizations and the larger community, and public parking. Given the public and nonprofit nature of the proposed development, private funding or financing is very limited, particularly prior to completion of construction. The requested fee deferral will be instrumental in ensuring that the project can proceed through the design, approval, permitting and construction process with available funds. Without this deferral, the project will be extremely challenged in its ability to maintain progress in moving this project into construction towards completion.

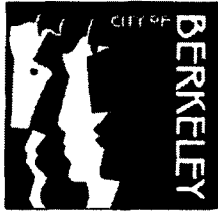
We intend to submit our construction plans for permit review by mid-August of this year, so we very much appreciate your attention to and consideration of this requested application fee deferral and refund.

Sincerely,

John Clawson

CC: Steve Barton, City of Berkeley  
Roger Asterino, City of Berkeley  
Aaron Sage, City of Berkeley  
Carolyn Bookhart, Resources for Community Development

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Office of the City Manager

## Attachment 2

August 11, 2006

Mr. John Clawson  
Oxford Street Development, LLC  
38 Keyes Avenue, Suite 201  
P.O. Box 29585  
San Francisco, CA 94129-0585

Dear Mr. Clawson:

This is in response to your revised July 14, 2006 letter, received via e-mail by Wendy Cosin, Deputy Planning Director on July 25, 2006, requesting deferral of the following estimated fees until issuance of a Final Certificate of Occupancy.

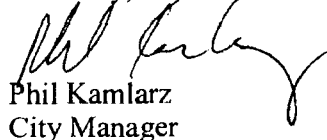
Oxford Plaza Housing:	\$ 1,057,215
David Brower Center:	<u>1,129,183</u>
Total:	\$ 2,186,398

The purpose of the Berkeley Municipal Code provision allowing fee deferrals is to provide an incentive for the production of affordable housing. Therefore, I am only administratively approving your request for fee deferral for the Oxford Plaza Housing project. However, I understand that the housing developer, RCD, is responsible for 27% of the fees for the first floor and garage of the Brower Center building, so we will allow a 27% fee deferral for this area.

Plan check fees will only be partially deferred. The traffic engineering fee and 80% of the plan check fee must be paid. However, we will defer payment of both of these fees until building permit issuance, rather than application submittal, as is generally required. The remaining deferred fees will be due prior to the issuance of a temporary certificate of occupancy. As indicated in the paragraph above, these fee deferrals only apply to the housing project and 27% of the fees for the Brower Center building.

A Council Report will be prepared for the September 19, 2006 City Council meeting to inform the Council of my action. Pursuant to the Berkeley Municipal Code, the Council may review the City Manager's action and may grant, wholly or in part, or deny the request.

Sincerely,

  
Phil Kamlarz  
City Manager

cc: Wendy Cosin, Deputy Planning Director  
Steve Barton, Housing Director

Sharon Crosby, Permit Center Coordinator  
Joan MacQuarrie, Building Official