



Office of the Mayor

ACTION CALENDAR  
April 5, 2016  
(Continued from February 23, 2016)

To: Honorable Members of the City Council

From: Mayor Tom Bates

Subject: Revise the Affordable Housing Mitigation Fee Program and Fee

RECOMMENDATION

Request that the City Manager return to the Council with a revised Affordable Housing Mitigation Fee ordinance and a Council resolution to 1) increase the percentage of affordable units -- to 20% of market-rate units from the current 10% -- that can be provided in lieu of the Mitigation Fee, 2) expand the level of affordability for such units, and 3) increase the Fee, which is due at Certificate of Occupancy, to \$34,000 from the current \$28,000, and add an alternative option to pay \$28,000 if paid early, when the Building Permit is issued. It is recommended that the revisions take into consideration the findings in the most recent Nexus Study, the input from the Feb. 16, 2016 Special City Council Meeting on housing and the Suggested Revisions section below.

BACKGROUND

The critical need for more affordable housing in Berkeley is widely recognized. The City seeks to increase the supply of such housing in a number of ways. One of the main mechanisms is the City's Affordable Housing Mitigation Fee (BMC Sec. 22.20.065), which is intended to help meet the increased need for affordable housing caused by construction of new market-rate rental units in Berkeley. (The addition of market-rate housing generates new jobs, many of which are filled by employees who cannot afford market-rate housing in Berkeley.) The ordinance requires such projects to pay a per-unit Fee, currently set at \$28,000, to the City's Housing Trust Fund, which funds affordable housing developments in the City. The ordinance allows market-rate projects to be exempt from the Fee if they provide affordable housing units on site – equal in number to 10% of the project's market-rate units. The affordable units must be affordable to very low income households, defined as those earning up to 50% of Area Median Income (AMI).

In assessing such a Fee, the City is required to conduct a "nexus study" to establish the relationship of the new housing, the resulting need for affordable housing and the amount of the Fee. Accordingly, the requirements in the Affordable Housing Mitigation Fee ordinance were adopted following a 2010 Nexus Study commissioned by the City. That study provided the basis for the current Fee, the equivalent percentage of affordable units to be included in the project and the level of affordability for such units.

Because the housing market and demographic information used in the 2010 study became outdated, the City commissioned a new assessment, the 2015 Nexus Study, presented to the City Council on July 14, 2015. That Nexus Study found justification for a higher percentage of affordable units to be used as equivalent to the Fee. It also found that housing had become unaffordable to a larger proportion of the population earning more than 50% of the AMI. And it found that the Fee could be raised and still allow a reasonable rate of return.

### Suggested Revisions

This Council item addresses three components of the Affordable Housing Mitigation Fee program: 1) the percentage of affordable units deemed equivalent to the Fee, 2) the level of affordability for such units, and 3) the amount and timing of payment of the Fee:

- 1) Increase the percentage of affordable units to 20%, up from the current 10%, in line with the findings from the most recent Nexus Study.
- 2) Divide the affordable units into two tiers or levels of affordability. The first tier would be very low income households, which are those earning up to 50% of the AMI. The second tier would be low income households, which are those earning up to 80% of the AMI. Increasing the level of affordability is consistent with the 2015 Nexus Study. Staff would be asked to consider options for the percentage of affordable housing in each tier, particularly the option of 10% affordable units in each tier (10% of the market rate units affordable to households earning up to 50% of AMI and 10% of the market rate units affordable to households earning up to 80% of AMI) and to recommend how to equate the affordable units to the Fee in each tier.
- 3) Increase the Fee to \$34,000 per unit from the current \$28,000, and offer an option to pay \$28,000 per unit if paid early, prior to issuance of a Building Permit. The Fee currently is payable prior to issuance of a Certificate of Occupancy. The 2015 Nexus study found that the current Fee could be increased to \$34,000 and still allow a reasonable rate of return. This recommendation thus follows the Nexus study findings for the amount of Fee payable prior to Certificate of Occupancy, and adds the option of paying \$28,000 instead as an incentive for paying the Fee early. Depending on the rate of return at the time, a smaller fee paid earlier could be equal in value to a larger fee paid later. A fee paid earlier into the Housing Trust Fund also allows the City to begin providing affordable housing sooner.

The proposed increase in the percentage of affordable units and division of such units into two tiers of affordability are consistent also with the City's original Inclusionary Housing Ordinance, which required multi-unit housing projects to include 20% affordable housing up to 80% of the AMI, or pay in-lieu fees. (Rental housing was later excluded from the Inclusionary Housing Ordinance by the State Court of Appeal in *Palmer/Sixth Street Properties v. City Los Angeles* in 2009. As a result, the City's Affordable Housing Mitigation Fee ordinance was adopted for rental housing.)

FINANCIAL IMPLICATIONS

Revising the Affordable Housing Mitigation Fee program and Fee will entail temporary added administrative costs, including staff time. Increasing the percentage of affordable housing equivalent to the Affordable Housing Mitigation Fee and increasing the Fee could add income to the Housing Trust Fund, depending on future choices made by project developers.

ENVIRONMENTAL SUSTAINABILITY

Increasing affordable housing in Berkeley could help reduce commute times and increase use of public transportation for low income and very low income workers in jobs created by new market-rate housing, thus decreasing greenhouse gas emissions.

CONTACT PERSON

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