To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Zach Cowan, City Attorney  
Subject: Supplemental Report: Changes to Affordable Housing Mitigation Fee; Amending Berkeley Municipal Code Section 22.20.065  

RECOMMENDATION  
Conduct a public hearing and upon conclusion:  

1. Adopt first reading of an Ordinance amending BMC Section 22.20.065 as proposed by staff, as shown in Attachment 2; and  
2. Adopt a Resolution revising the Affordable Housing Mitigation Fee by eliminating the discount in the fee when it is paid at issuance of the certificate of occupancy pursuant to Berkeley Municipal Code Section 22.20.065 and adjusting the fee each two years for inflation by reference to the California Construction Cost Index (CCI), and rescinding Resolution Nos. 65,920-N.S. and 67,614-N.S., with changes proposed by staff, as shown in Attachment 5.  

FISCAL IMPACTS OF RECOMMENDATION  
Possible additional funds for Housing Trust Fund.  

CURRENT SITUATION AND ITS EFFECTS  
The City currently imposes a $34,000 affordable housing mitigation fee (AHMF) on new market rate rental units developed in Berkeley.  

BACKGROUND  
On May 16, 2017, the Council set this matter for public hearing on June 13, 2017, and directed staff to make specified changes to the ordinance amendments as proposed by Council member Harrison, as well as amendments to Resolution No. 67,614-N.S. which sets the amount of the AHMF. The Council also requested information of local trends in rental rates. As stated at the May 16, meeting, staff are also proposing a limited number of changes to Council member Harrison’s drafts, as described below.
The Ordinance Amendments
Attachment 1 is Councilmember Harrison’s proposal, with the corrected formula, as directed by the Council. Various formatting changes have also been made. As is customary, Councilmember Harrison’s proposed changes are shown in track changes.

Attachment 2 is the same ordinance (with all changes accepted) with certain additional modifications suggested by staff (in track changes), described below. They are as follows.
- The findings in subdivision A are corrected to reflect both nexus studies and their results, rather than deleting any reference to the 2010 study. In addition, the name of the consultant is corrected and made consistent.
- Subdivision C.1 is amended to conform to state law (Gov. Code § 66007(a), which generally prohibits the imposition of fees prior to certificate of occupancy or final inspection, subject to certain exceptions that are not applicable here.
- Subdivision C.2 has been amended at Council member Harrison’s request to continue to allow projects with less than 10 units to avoid the AHMF by providing in lieu BMR units.
- As noted above, the formula in subdivision D.1 is corrected to conform the subdivision C.2 (20% of total units in project).
- Subdivision E is amended to reflect state law, that a new nexus analysis would be required to adopt different fee levels for different areas of the City if they exceed the amounts justified by the current nexus analysis. This is because the existing study did not undertake an area-by-area analysis, and thus cannot be used to justify specific fees levels for specific areas.

The Resolution
On October 16, 2012, the City Council adopted Resolution No. 65,920-N.S. setting the AHMF at $28,000 per market rate unit at the issuance of a certificate of occupancy and establishing criteria for applying the fee. On July 12, 2016, the City Council adopted Resolution No. 67,614-N.S. which amended Resolution No. 65,920-N.S. to raise the fee to $34,000 per new unit of rental housing, payable prior to the issuance of a temporary or final Certificate of Occupancy and amended the criteria for applying the fee.

Staff has drafted a resolution that captures the provisions originally adopted with Resolution No. 65,920-N.S., and incorporates the revisions adopted with Resolution No. 67,614-N.S. to create a single document that reflects the current AHMF amount and criteria for applying the fee. The revisions to the Affordable Housing Mitigation Fee resolution proposed by Councilmember Harrison at the May 16, 2017 meeting have been applied to the resolution prepared by staff and are reflected in track changes in Attachment 3. Key revisions to the resolution as proposed by Councilmember Harrison include payment of the AHMF at the issuance of the Building Permit, and that the AHMF will be adjusted by the Construction Cost Index every other year on July 1. Attachment 4 reflects the clean version of the resolution with track changes accepted.
Beyond formatting and the addition of administrative language for clarity, staff is proposing the following substantive changes to the resolution, which are shown in track changes in Attachment 5:

- Section 1 is amended to conform to state law (Gov. Code § 66007(a), which generally prohibits the imposition of fees prior to certificate of occupancy or final inspection, subject to certain exceptions that are not applicable here. However, and the request of Council member Harrison, the fee amount is increased to $37,000, with a $3,000 discount if fees are paid no later than issuance of a building permit. The net effect of these changes is to maintain the fee at $34,000, but only if it is paid at the no later than the issuance of a building permit, and to increase it to $37,000 if it is not paid until a Certificate of Occupancy is issued.
- Section 2 is amended to specify the California Construction Cost Index published by the state Department of General Services, to state that the first automatic adjustment would occur in 2018, and to clarify that the automatic adjustment is applicable to projects that do not have final approval as of the effective date of the adjustment.
- A new section 9 is added to clarify the effective date of future fee increases.

Trends in Rental Rates
Between the May 16 meeting and the date this item was submitted, there was insufficient time to develop the necessary data to conduct a comprehensive analysis of trends in local rental rates.

Data provided by the Rent Stabilization Board shows that median rents have increased significantly and continue to increase, as shown below.

<table>
<thead>
<tr>
<th>Unit Size</th>
<th>2015 Median Rent</th>
<th>2016 Median Rent</th>
<th>% Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Studio</td>
<td>$1,475</td>
<td>$1,600</td>
<td>8.47%</td>
</tr>
<tr>
<td>1 BR</td>
<td>$1,800</td>
<td>$1,995</td>
<td>10.83%</td>
</tr>
<tr>
<td>2 BR</td>
<td>$2,600</td>
<td>$2,750</td>
<td>5.77%</td>
</tr>
<tr>
<td>3 BR</td>
<td>$3,450</td>
<td>$3,595</td>
<td>4.20%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Unit Size</th>
<th>2014 Median Rent</th>
<th>2016 Median Rent</th>
<th>% Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Studio</td>
<td>$1,250</td>
<td>$1,600</td>
<td>28.00%</td>
</tr>
<tr>
<td>1 BR</td>
<td>$1,595</td>
<td>$1,995</td>
<td>25.08%</td>
</tr>
<tr>
<td>2 BR</td>
<td>$2,250</td>
<td>$2,750</td>
<td>22.22%</td>
</tr>
<tr>
<td>3 BR</td>
<td>$3,000</td>
<td>$3,595</td>
<td>19.83%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Unit Size</th>
<th>2011 Median Rent</th>
<th>2016 Median Rent</th>
<th>% Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Studio</td>
<td>$970</td>
<td>$1,600</td>
<td>64.95%</td>
</tr>
<tr>
<td>1 BR</td>
<td>$1,250</td>
<td>$1,995</td>
<td>59.60%</td>
</tr>
<tr>
<td>2 BR</td>
<td>$1,700</td>
<td>$2,750</td>
<td>61.76%</td>
</tr>
</tbody>
</table>
As can be seen above, it is not true that there has been a reduction in rents in the last year. According to data collected by the Rent Board, rents for Studios, 1 Bedrooms, 2 Bedrooms, and 3 Bedrooms all increased between 2015 and 2016. While it is true that rents increased more between 2014 and 2015, rents still increased over the next year. Cumulatively, rents increased between 20% and 28% from 2014 (the year of the Nexus Study) to 2016. Data on 2017 rents are not yet available.

On the other hand, anecdotal information reported by the Berkeley Property Owners Association (BPOA) was that rents peaked the end of 2015 and beginning of 2016, and are now starting to decline. This started in San Francisco a year ago, and in Berkeley in the fall of 2016. The articles linked below provide some explanation – the regional job engine is slowing due to the cost of housing.


According to the BPOA most property owners in Berkeley use a 100% vacancy model, which means they will adjust rents in order to fully lease up a building. Thus while advertised prices may be $4000+ for a 2-bedroom apartment, landlords are willing to negotiate in order to fill up buildings, or to accept more tenants than they otherwise would (e.g., renting a 2-bedroom apartment to 5 students for $1,000/bed in order to achieve $5,000/unit.

ENVIRONMENTAL SUSTAINABILITY
There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION
See preceding discussion.

ALTERNATIVE ACTIONS CONSIDERED
None.

CONTACT PERSON
Zach Cowan, City Attorney (510) 981-6950
Attachments:
1: Ordinance Amending Berkeley Municipal Code Section 22.20.065 Affordable Housing Mitigation Fee (with Councilmember Harrison’s revisions in track changes)
2: Ordinance Amending Berkeley Municipal Code Section 22.20.065 Affordable Housing Mitigation Fee (clean version with track changes accepted), additional staff proposed changes in track changes
3: Resolution - (with Councilmember Harrison’s revisions in track changes)
4: Resolution - (clean version with track changes accepted)
5: Resolution - (clean version with track changes accepted), additional staff proposed changes in track changes
6: May 16, 2017 Revised Report from Councilmember Harrison regarding revisions to Berkeley Municipal Code Section 22.20.065 Affordable Housing Mitigation Fee
7: May 16, 2017 Revised Report from Councilmember Harrison regarding adopting changes to the Affordable Housing Mitigation Fee resolution.
8: Public Hearing Notice
ORDINANCE NO. #,###-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 22.20.065
AFFORDABLE HOUSING MITIGATION FEE

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

Section 1. That Berkeley Municipal Code Section 22.20.065 is amended to read as follows:

22.20.065 Affordable housing mitigation fee.
A. Findings and purpose.

1. The State of California has established a Regional Housing Needs Allocation (RHNA) process under which it allocates a "fair share" of the regional housing need, updated periodically, to each local jurisdiction. The RHNA for the San Francisco Bay Area allocates to Berkeley a "fair share" that calls for adequate sites for 2,431 housing units for the period from 2007 to 2014, including sites for 164 extremely low income units, 164 very low income units, 424 lower income units, and 549 moderate income units. The City's Housing Element, adopted on October 19, 2010, complies with this RHNA.

2. In 1990, the City established the Housing Trust Fund to pool available funding for affordable housing development. The majority of resources in the Housing Trust Fund have been from federal sources, although state and local sources have been significant as well. Since 1990, the City has provided Housing Trust Funds to affordable housing developments throughout the City, and has revised the Housing Trust Fund Guidelines a number of times, most recently in 2009, to reflect changing market conditions and City priorities.

3. While Housing Trust Funds are a significant source of support for affordable housing developments within the City, Housing Trust Funds alone are not sufficient to cover the costs of providing affordable housing today. Each development must leverage multiple federal and state sources of funding to be financially feasible. Even then, the housing produced is not sufficient to meet local needs for housing for lower income households, as documented in the Housing Element., the Everyone Home Plan adopted in 2006, and the 2010 Consolidated Plan.

4. In 1986 the City adopted an Inclusionary Housing Ordinance, which required, among other things, that a percentage of all new residential rental units in projects of 5 or more units be provided at below market rates for the life of the project. The City of Berkeley's Inclusionary Housing Ordinance has been an important tool in creating affordable housing in the City since its adoption.
5. In 1993, the City established an affordable housing linkage fee on commercial
development, designed to mitigate the need for affordable housing it
creates. Income from this linkage fee has been administered through the Housing
Trust Fund, mitigating some impact of commercial development.

6. Even in combination with other funding sources, the City's linkage fee and its
Inclusionary Housing Ordinance have not been sufficient to fully address local
housing needs.

7. A 2009 decision of the California Court of Appeal (*Palmer/Sixth Street Properties v. City of Los Angeles* (2009) 175 Cal. App. 4th 1396) has further impaired the
City's ability to provide for needed - and state-allocated - affordable housing. Palmer holds that the City may not require rents to be limited in rental projects
unless it provides assistance to the rental project, thus invalidating the City's
Inclusionary Housing Ordinance requirements as to rental projects.

8. Accordingly, the only remaining feasible and practicable option to meet the City's
RHNA for below market rate units is to impose an affordable housing mitigation
fee on new market-rate rental units, to mitigate the impacts of those new units on
the need for affordable housing.

9. New market-rate rental housing, including Density Bonus Units, contributes to the
demand for goods and services in the City, increasing local service employment
at wage levels which often do not permit employees to afford housing in the City.

10. The "Affordable Housing Fee Nexus Study," dated June 2010March 2015 (the
"Nexus Study"), prepared by Bay Area *Urban* Economics, quantifies the impacts
of new market-rate rental units on the need for affordable housing in the City.

11. The study estimated the additional spending attributable to each new housing unit
in the City, then translated this spending into jobs at a range of income levels.
The study estimated the number of households (53) the job-holders (93) would
make up, and their household incomes. The City relied on this study to set a fee
of $28,000-34,000 in 2012-2015.

12. A new Nexus Study, dated March 25, 2015, prepared by Bay Area Economics,
and presented to Council supported a maximum fee at $84,400.

B. Definitions.

1. "Density Bonus Project" means a Development project that receives a density
bonus pursuant to Government Code Section 65915.

2. "Density Bonus Units" means additional units to which an applicant for a Density
Bonus Project is entitled and constructs pursuant to Government Code Section
3. "Income" means combined annual gross income from all sources.

4. "Low-income Household" shall mean a household whose income is no more than 80% of AMI.

5. Low-income Unit" means any dwelling unit that is rented, for the life of the Development project in which it is located, at a price affordable to a Low-Income Household of an appropriate size for the dwelling unit, and restricted to households with an income not exceeding 80% of AMI.

6. "Qualifying Units" means those below market-rate units in a Density Bonus Project that entitle the applicant to a density bonus pursuant to Government Code Section 65915.

7. "Very Low-Income Household" shall mean a household whose income shall be no more than 50% of AMI.

8. "Very Low-Income Unit" means any dwelling unit that is rented, for the life of the Development project in which it is located, at a price affordable to a Very Low Income Household of an appropriate size for the dwelling unit, and restricted to households with an income not exceeding 50% of AMI.

9. For purposes of this Section, affordable rents shall be determined in accordance with the provisions of Health and Safety Code section 50105, 50052.5(b)(2), and 50052.5(h), and California Code of Regulations Chapter 25 Section 6918.

10. Tenant-paid utility costs will be deducted from gross rent to determine the rent paid by the tenant. Utility costs will be based on the Berkeley Housing Authority Section 8 utility allowance, or future equivalent standard.

11. Minimum bedroom size will be 70 square feet, consistent with Berkeley's Housing Code (19.40.010.A, Uniform Housing Code Chapter 5, Section 503.2).

C. The City Council may by resolution adopt an affordable housing impact fee ("Fee"), which shall be imposed on the development of new rental housing in Berkeley, subject to limitations set forth in this Chapter and any additional limitations set forth in the Resolution. All such Fees shall be managed consistent with Government Code Sections 66000 et seq. Up to 10 percent of Fees may be used to pay for administration of the Fee or the Housing Trust Fund or any successor fund with the same purpose, and the remainder shall be deposited in the City's Housing Trust Fund or any successor fund with the same purpose.
1. All Fees shall be paid prior to issuance of a certificate of occupancy at the issuance of a building permit, except as set forth in this subdivision or in the City Council Resolution that adopts the Fee.

2. An applicant for a Development project with more than 10 dwelling units that is subject to the Fee may elect to avoid the Fee by providing, for the life of the project, a number of units equal to 20% of the market rate total units in the project at rental rates affordable to Low-Income and Very Low-Income Households and pay a proportionately reduced Fee as calculated in Section 22.20.065D.

3. An applicant for a Development project subject to this Section may provide less than 20% of market rate units as Low-Income and Very Low-Income Units and pay a proportionately reduced Fee as calculated in Section 22.20.065.D. In all such cases the applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all such dwelling units and other information as required for determining compliance with this Section. All such units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the market rate units in the project; and be comparable with the design or use of market rate units in terms of appearance, materials and finish quality. The owner of any units produced under this option must report to the City annually on the occupancy and rents charged for the units.

4. In projects providing more than one below market rate unit (meaning the combination of Low-income Units and Very Low-Income Units), at least 50% of the units shall be affordable to Very Low-income Households. When there is an uneven number of units provided under this ordinance, the majority of the below market rate units shall be Very Low-Income units.

5. Units that meet the criteria established for affordable housing rents in the City's Housing Trust Fund guidelines, as amended shall be exempt from the Fee.

D. Projects that include Low-income and Very Low-Income Units, including Qualifying Units, will qualify to pay a discounted fee if providing fewer than the number of units equal to 20% of the market total rate units in the project.

1. The following equation calculates the proportional discount to the fee based on the portion of units in the project that are provided at Low-Income and Very Low Income rents. The total fee payable for such projects shall be:

$$
[(A - B - C) \times \text{Fee}] - \left[ \frac{(B+C)}{(A-B-C) \times 20\%} \right] \times ((A-B-C) \times \text{Fee})
$$

Where:

$A =$ Total number of units in the project
B = Number of Very-Low Income Units provided in the project.

C = Number of Low-Income Units provided in the project.

E. The City Council may by resolution opt to vary fees and inclusionary requirements by areas of the city and/or zoning districts.

F. The City Council may by resolution establish fees for the administration of the program established by this Section.

G. Compliance with this Section shall be a condition of approval of all Development projects subject to this Section, whether or not such a condition is expressly included in the Use Permit.

H. Consistent with Government Code 66000, this Section will be revisited every 5 years to confirm whether the purpose, the nexus, and the amount of the fee are still valid.

I. Administrative Regulations. The City Manager or his/her designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross rents, requiring guarantees, entering into and recording agreements with applicants and taking other appropriate steps necessary to assure that the required Low Income and Very Low Income Units are provided and occupied by Very Low Income and Low Income Households.

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 Council Chambers, 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.
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3. While Housing Trust Funds are a significant source of support for affordable housing developments within the City, Housing Trust Funds alone are not sufficient to cover the costs of providing affordable housing today. Each development must leverage multiple federal and state sources of funding to be financially feasible. Even then, the housing produced is not sufficient to meet local needs for housing for lower income households, as documented in the Housing Element, the Everyone Home Plan adopted in 2006, and the 2010 Consolidated Plan.

4. In 1986 the City adopted an Inclusionary Housing Ordinance, which required, among other things, that a percentage of all new residential rental units in projects of 5 or more units be provided at below market rates for the life of the project. The City of Berkeley's Inclusionary Housing Ordinance has been an important tool in creating affordable housing in the City since its adoption.
5. In 1993, the City established an affordable housing linkage fee on commercial development, designed to mitigate the need for affordable housing it creates. Income from this linkage fee has been administered through the Housing Trust Fund, mitigating some impact of commercial development.

6. Even in combination with other funding sources, the City's linkage fee and its Inclusionary Housing Ordinance have not been sufficient to fully address local housing needs.

7. A 2009 decision of the California Court of Appeal (Palmer/Sixth Street Properties v. City of Los Angeles (2009) 175 Cal. App. 4th 1396) has further impaired the City's ability to provide for needed - and state-allocated - affordable housing. Palmer holds that the City may not require rents to be limited in rental projects unless it provides assistance to the rental project, thus invalidating the City's Inclusionary Housing Ordinance requirements as to rental projects.

8. Accordingly, the only remaining feasible and practicable option to meet the City's RHNA for below market rate units is to impose an affordable housing mitigation fee on new market-rate rental units, to mitigate the impacts of those new units on the need for affordable housing.

9. New market-rate rental housing, including Density Bonus Units, contributes to the demand for goods and services in the City, increasing local service employment at wage levels which often do not permit employees to afford housing in the City.

10. An "Affordable Housing Fee Nexus Study," dated March, 2015-June 2010 (the "Nexus Study"), prepared by BAE ay Area Urban Economics, quantifies the impacts of new market-rate rental units on the need for affordable housing in the City.

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2. "Density Bonus Units" means additional units to which an applicant for a Density Bonus Project is entitled and constructs pursuant to Government Code Section 65915.

3. "Income" means combined annual gross income from all sources.

4. "Low-income Household" shall mean a household whose income is no more than 80% of AMI.

5. Low-income Unit" means any dwelling unit that is rented, for the life of the Development project in which it is located, at a price affordable to a Low-Income Household of an appropriate size for the dwelling unit, and restricted to households with an income not exceeding 80% of AMI.

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9. For purposes of this Section, affordable rents shall be determined in accordance with the provisions of Health and Safety Code section 50105, 50052.5(b)(2), and 50052.5(h), and California Code of Regulations Chapter 25 Section 6918.

10. Tenant-paid utility costs will be deducted from gross rent to determine the rent paid by the tenant. Utility costs will be based on the Berkeley Housing Authority Section 8 utility allowance, or future equivalent standard.

11. Minimum bedroom size will be 70 square feet, consistent with Berkeley's Housing Code (19.40.010.A, Uniform Housing Code Chapter 5, Section 503.2).

C. The City Council may by resolution adopt an affordable housing impact fee ("Fee"), which shall be imposed on the development of new rental housing in Berkeley, subject to limitations set forth in this Chapter and any additional limitations set forth in the Resolution. All such Fees shall be managed consistent with Government Code Sections 66000 et seq. Up to 10 percent of Fees may be used to pay for administration of the Fee or the Housing Trust Fund or any successor fund with the same purpose, and the remainder shall be deposited in the City's Housing Trust Fund or any successor fund with the same purpose.
1. All Fees shall be paid at the issuance of a building permit, at the issuance of a Certificate of Occupancy, except as set forth in this subdivision or in the City Council Resolution that adopts the Fee.

2. An applicant for a Development project with more than 10 dwelling units that is subject to the Fee may elect to avoid the Fee by providing, for the life of the project, a number of units equal to 20% of the total units in the project at rental rates affordable to Low-Income and Very Low-Income Households and pay a proportionately reduced Fee as calculated in Section 22.20.065.D.

3. An applicant for a Development project subject to this Section may provide less than 20% of market rate units as Low-Income and Very Low-Income Units and pay a proportionately reduced Fee as calculated in Section 22.20.065.D. In all such cases the applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all such dwelling units and other information as required for determining compliance with this Section. All such units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the market rate units in the project; and be comparable with the design or use of market rate units in terms of appearance, materials and finish quality. The owner of any units produced under this option must report to the City annually on the occupancy and rents charged for the units.

4. In projects providing more than one below market rate unit (meaning the combination of Low-income Units and Very Low-Income Units), at least 50% of the units shall be affordable to Very Low-income Households. When there is an uneven number of units provided under this ordinance, the majority of the below market rate units shall be Very Low-Income units.

5. Units that meet the criteria established for affordable housing rents in the City's Housing Trust Fund guidelines, as amended shall be exempt from the Fee.

D. Projects that include Low-income and Very Low-Income Units, including Qualifying Units, will qualify to pay a discounted fee if providing fewer than the number of units equal to 20% of the total rate units in the project.

4. The following equation calculates the proportional discount to the fee based on the portion of units in the project that are provided at Low-Income and Very Low Income rents. The total fee payable for such projects shall be:

\[ \text{[A x Fee]} - \frac{(B+C)}{(A x 20\%)} \times (A x \text{Fee}) \]

Where:
A = Total number of units in the project
B = Number of Very-Low Income Units provided in the project.
C = Number of Low-Income Units provided in the project.

E. The City Council may by resolution opt to vary the AHMF fees and in lieu unit options inclusionary requirements by areas of the city and/or zoning districts, subject to preparing an appropriate nexus analysis to support any increase in the AHMF.

F. The City Council may by resolution establish fees for the administration of the program established by this Section.

G. Compliance with this Section shall be a condition of approval of all Development projects subject to this Section, whether or not such a condition is expressly included in the Use Permit.

H. Consistent with Government Code 66000, this Section will be revisited every 5 years to confirm whether the purpose, the nexus, and the amount of the fee are still valid.

I. Administrative Regulations. The City Manager or his/her designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross rents, requiring guarantees, entering into and recording agreements with applicants and taking other appropriate steps necessary to assure that the required Low Income and Very Low Income Units are provided and occupied by Very Low Income and Low Income Households.

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 Council Chambers, 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.

CHANGING THE AFFORDABLE HOUSING MITIGATION FEE PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 22.20.065; AND RESCINDING RESOLUTION NOS. 65,920-N.S. AND 67,614-N.S.

WHEREAS, on June 28, 2011, the City adopted the Affordable Housing Mitigation Fee Ordinance No. 7,192-N.S., adopting Berkeley Municipal Code Section 22.20.065, which would require developers of market rate housing to pay an mitigation fee to address the resulting need for below market rate housing, and offered the alternative to provide units in lieu of the fee; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 did not establish the fee, but authorized the City Council to adopt such fee by resolution; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 authorizes the City Council to specify by resolution additional limitations not inconsistent with section 22.20.065; and

WHEREAS, on October 16, 2012, the City adopted Resolution No. 65,920-N.S. setting the fee at $28,000 per market rate unit at the issuance of a certificate of occupancy and establishing criteria for applying the fee; and

WHEREAS, the City adopted a Resolution No. 66,015-N.S. discounting the fee for certain projects, and Resolution No. 66,809-N.S. extending that discount, and that discount has now expired; and

WHEREAS, the City retained Bay Area Economics to complete an updated nexus study for the Affordable Housing Mitigation Fee, and that study, dated March 25, 2015 and reviewed by the Council at a special meeting on July 14, 2015, found a nexus supporting maximum possible fee of $84,400 per market rate unit; and

WHEREAS, on July 12, 2016, the City adopted Resolution No. 67,614-N.S. amending Resolution No. 65,920-N.S. to raise the fee to $34,000 per new unit of rental housing, payable prior to the issuance of a temporary or final Certificate of Occupancy and amending the criteria for applying the fee; and

WHEREAS, the Housing Advisory Commission recommended charging the fee when the building permit is issued as is done in San Francisco to insure funds are available to be leveraged as soon as projects receive their financing, rather than on certificate of occupancy, two to three years later; and

WHEREAS, the Resolution No. 67,614-N.S. adopted on July 12, 2016 further allowed for a discounted fee of $30,000 if the fee was paid on issuance of building permit; and
WHEREAS, a subsequent study conducted by Strategic Economics found that a fee of $44,000 was supportable without unduly impacting the financial feasibility of for-profit housing projects; and

WHEREAS, the nexus between housing costs and the fee is eroded by housing inflation because of the five year time period between nexus studies being conducted and possible longer time before a new fee is adopted; and

WHEREAS, on June 13, 2017, the City Council conducted a public hearing to consider changing the Affordable Housing Mitigation Fee pursuant to Berkeley Municipal Code Section 22.20.065.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be $34,000 per new unit of rental housing, payable prior to issuance of a temporary or final Certificate of Occupancy at the Issuance of the Building Permit.

2. An applicant for a development project that is subject to the fee may elect to pay the fee at the issuance of the Building Permit, in which case the fee will be discounted to $30,000 per new unit of rental housing. This early payment discount option shall be available only to projects that do not have a complete application at the time this resolution is adopted and submit a complete application by the date 18 months from the adoption of this resolution. The Affordable Housing Mitigation Fee will be adjusted by the Construction Cost Index every other year on July 1. The automatic adjustment tied to the Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study.

3. For purposes of this resolution, “new rental housing” includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020(B), at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.

4. For purposes of this resolution, “new rental housing” shall not include developments of four units or fewer units.

5. For the purposes of this resolution, “new rental housing” shall not include cooperative student housing developed by the Berkeley Student Cooperative.

6. The definition of “new rental housing” excludes units which are offered at no cost to support nonprofit public benefit activities.

7. No fee shall be assessed under the following circumstances.
   a. No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been “destroyed” and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not
be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.

b. No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.

8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.

BE IT FURTHER RESOLVED that Resolution Nos. 65,920-N.S. and 67,614-N.S. are hereby rescinded.
RESOLUTION NO. XX,XXX–N.S.

CHANGING THE AFFORDABLE HOUSING MITIGATION FEE PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 22.20.065; AND RESCINDING RESOLUTION NOS. 65,920-N.S. AND 67,614-N.S.

WHEREAS, on June 28, 2011, the City adopted the Affordable Housing Mitigation Fee Ordinance No. 7,192-N.S., adopting Berkeley Municipal Code Section 22.20.065, which would require developers of market rate housing to pay an mitigation fee to address the resulting need for below market rate housing, and offered the alternative to provide units in lieu of the fee; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 did not establish the fee, but authorized the City Council to adopt such fee by resolution; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 authorizes the City Council to specify by resolution additional limitations not inconsistent with section 22.20.065; and

WHEREAS, on October 16, 2012, the City adopted Resolution No. 65,920-N.S. setting the fee at $28,000 per market rate unit at the issuance of a certificate of occupancy and establishing criteria for applying the fee; and

WHEREAS, the City adopted a Resolution No. 66,015-N.S. discounting the fee for certain projects, and Resolution No. 66,809-N.S. extending that discount, and that discount has now expired; and

WHEREAS, the City retained Bay Area Economics to complete an updated nexus study for the Affordable Housing Mitigation Fee, and that study, dated March 25, 2015 and reviewed by the Council at a special meeting on July 14, 2015, found a nexus supporting maximum possible fee of $84,400 per market rate unit; and

WHEREAS, on July 12, 2016, the City adopted Resolution No. 67,614-N.S. amending Resolution No. 65,920-N.S. to raise the fee to $34,000 per new unit of rental housing, payable prior to the issuance of a temporary or final Certificate of Occupancy and amending the criteria for applying the fee; and

WHEREAS, the Housing Advisory Commission recommended charging the fee when the building permit is issued as is done in San Francisco to insure funds are available to be leveraged as soon as projects receive their financing, rather than on certificate of occupancy, two to three years later; and

WHEREAS, the Resolution No. 67,614-N.S. adopted on July 12, 2016 further allowed for a discounted fee of $30,000 if the fee was paid on issuance of building permit; and
WHEREAS, a subsequent study conducted by Strategic Economics found that a fee of $44,000 was supportable without unduly impacting the financial feasibility of for-profit housing projects; and

WHEREAS, the nexus between housing costs and the fee is eroded by housing inflation because of the five year time period between nexus studies being conducted and possible longer time before a new fee is adopted; and

WHEREAS, on June 13, 2017, the City Council conducted a public hearing to consider changing the Affordable Housing Mitigation Fee pursuant to Berkeley Municipal Code Section 22.20.065.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be $34,000 per new unit of rental housing, payable at the Issuance of the Building Permit.

2. The Affordable Housing Mitigation Fee will be adjusted by the Construction Cost Index every other year on July 1. The automatic adjustment tied to the Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study.

3. For purposes of this resolution, “new rental housing” includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020(B), at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.

4. For purposes of this resolution, “new rental housing” shall not include developments of four units or fewer units.

5. For the purposes of this resolution, “new rental housing” shall not include cooperative student housing developed by the Berkeley Student Cooperative.

6. The definition of “new rental housing” excludes units which are offered at no cost to support nonprofit public benefit activities.

7. No fee shall be assessed under the following circumstances.
   a. No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been “destroyed” and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.
   b. No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.
8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.

BE IT FURTHER RESOLVED that Resolution Nos. 65,920-N.S. and 67,614-N.S. are hereby rescinded.
WHEREAS, on June 28, 2011, the City adopted the Affordable Housing Mitigation Fee Ordinance No. 7,192-N.S., adopting Berkeley Municipal Code Section 22.20.065, which would require developers of market rate housing to pay an mitigation fee to address the resulting need for below market rate housing, and offered the alternative to provide units in lieu of the fee; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 did not establish the fee, but authorized the City Council to adopt such fee by resolution; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 authorizes the City Council to specify by resolution additional limitations not inconsistent with section 22.20.065; and

WHEREAS, on October 16, 2012, the City adopted Resolution No. 65,920-N.S. setting the fee at $28,000 per market rate unit at the issuance of a certificate of occupancy and establishing criteria for applying the fee; and

WHEREAS, the City adopted a Resolution No. 66,015-N.S. discounting the fee for certain projects, and Resolution No. 66,809-N.S. extending that discount, and that discount has now expired; and

WHEREAS, the City retained Bay Area Economics to complete an updated nexus study for the Affordable Housing Mitigation Fee, and that study, dated March 25, 2015 and reviewed by the Council at a special meeting on July 14, 2015, found a nexus supporting maximum possible fee of $84,400 per market rate unit; and

WHEREAS, on July 12, 2016, the City adopted Resolution No. 67,614-N.S. amending Resolution No. 65,920-N.S. to raise the fee to $34,000 per new unit of rental housing, payable prior to the issuance of a temporary or final Certificate of Occupancy and amending the criteria for applying the fee; and

WHEREAS, the Housing Advisory Commission recommended charging the fee when the building permit is issued as is done in San Francisco to insure funds are available to be leveraged as soon as projects receive their financing, rather than on certificate of occupancy, two to three years later; and

WHEREAS, the Resolution No. 67,614-N.S. adopted on July 12, 2016 further allowed for a discounted fee of $30,000 if the fee was paid on issuance of building permit; and
WHEREAS, a subsequent study conducted by Strategic Economics found that a fee of $44,000 was supportable without unduly impacting the financial feasibility of for-profit housing projects; and

WHEREAS, the adequacy of a fee nexus between housing costs and the fee is eroded by housing inflation because of the five year time period between nexus studies being conducted and possible longer time before a new fee is adopted; and

WHEREAS, on June 13, 2017, the City Council conducted a public hearing to consider changing the Affordable Housing Mitigation Fee pursuant to Berkeley Municipal Code Section 22.20.065.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be $347,000 per new unit of rental housing, payable at the issuance of the Building Permit issuance of Certificate of Occupancy, but shall be subject to a $3,000 discount if paid in its entirety no later than issuance of the building permit for the project on which the fee is due. The Affordable Housing Mitigation Fee shall only apply to market rate units.

2. The Affordable Housing Mitigation Fee will be automatically adjusted by the annual percentage shown in the California Construction Cost Index published by the California Department of General Services, every other year beginning in 2018, on July 1. The automatic adjustment tied to the California Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study, and shall apply to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment.

3. For purposes of this resolution, “new rental housing” includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020(B), at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.

4. For purposes of this resolution, “new rental housing” shall not include developments of four units or fewer units.

5. For the purposes of this resolution, “new rental housing” shall not include cooperative student housing developed by the Berkeley Student Cooperative.

6. The definition of “new rental housing” excludes units which are offered at no cost to support nonprofit public benefit activities.

7. No fee shall be assessed under the following circumstances.

   a. No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been “destroyed” and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not
be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.

b. No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.

8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.

9. Except as set forth in section 2, future increases in the Affordable Housing Mitigation Fee shall apply only to projects whose applications are not complete as of the effective date of the fee.

BE IT FURTHER RESOLVED that Resolution Nos. 65,920-N.S. and 67,614-N.S. are hereby rescinded.
To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Changes in the Affordable Housing Mitigation Fee

RECOMMENDATION
Amend Ordinance 7.499-N.S by eliminating the discount in the affordable housing mitigation fee when it is paid at issuance of the building permit and clarifying that the 20% of inclusionary units for applicants who choose to provide inclusionary units in lieu of the fee is applied to total project units, not market rate units consistent with the 2015 Nexus Study. In addition, the amendments require that project applicants pay the Affordable Housing Mitigation Fee for projects with ten or fewer proposed market rate units (including density bonus market rate units) rather than have the option of building the affordable units on site. The proposed amendments clarify the fee process for Affordable Housing.

FINANCIAL IMPLICATIONS
Eliminating the discount in the Affordable Housing Mitigation Fee (AHMF) and requiring it to be adjusted by the Construction Cost Index (CCI) each year would result in additional fees being available in the Affordable Housing Fund.

BACKGROUND
The AHMF is an important source of local funds that assist affordable housing developers leverage additional, non-local funding. The current situation allows an applicant to elect to pay the fee at the Certificate of Occupancy at the amount recommended in the 2015 Nexus Study, but also allows an applicant to pay a discounted fee of $30,000 per new unit of rental housing if the fee is paid on issuance of the building permit. The Housing Advisory Commission recommended that the AHMF be paid at the full $34,000 amount adopted by the Council at building permit as is done in San Francisco. Instead, the City Council elected to provide two options, one a discounted $30,000 fee per market rate unit if paid at the time the building permit is issued – an option not discussed in the Nexus Study – or a $34,000 fee if paid when the certificate of occupancy is issued. The time period between building permit and certificate of occupancy is estimated at two to three years; for applicants who chose the option of paying the full amount at certificate of occupancy, the AHMF is without those earmarked funds during that period.
The Nexus Study indicated that for every 100 market rate units, a need for 25 affordable units is created. Thus, in a 125 unit building, 20% of the total units (i.e., 25 units) would be affordable and 80% (i.e., 100) would be market rate if the applicant elects to build inclusionary units. This makes intuitive sense as applicants usually have a project size in mind before beginning. Instead, the current statute begins with market rate units and calculates the required number of affordable units on that basis. Thus, for 100 market rate units above results in only 20 affordable units in a 120 unit project, or 16.67% affordability. Not only does this reduce the number of affordable units, it changes the building envelope from 125 to 120 units.

In addition, the administration and monitoring required to ensure that property owners comply with affordable housing requirements for properties providing inclusionary units is time consuming. Requiring staff to do so for very small projects places an undue administrative burden and cost on the City. Thus, the ordinance requires that project applicants pay the Affordable Housing Mitigation Fee for projects with 10 or fewer proposed market rate units (including density bonus units) rather than providing these developments with the option of building the affordable units on site. State law does not allow local jurisdictions to require inclusionary units built on site to remain affordable in perpetuity, it does allow jurisdictions to provide only the option of paying housing mitigation fees.

ENVIRONMENTAL SUSTAINABILITY
There are no identifiable environmental effects or opportunities associated the action suggested in this report.

CONTACT PERSON
Councilmember Kate Harrison
Council District 4
510-981-7140

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

Section 1. That Berkeley Municipal Code Section 22.20.065 is amended to read as follows:

22.20.065 Affordable housing mitigation fee.
A. Findings and purpose.

1. The State of California has established a Regional Housing Needs Allocation (RHNA) process under which it allocates a "fair share" of the regional housing need, updated periodically, to each local jurisdiction. The RHNA for the San Francisco Bay Area allocates to Berkeley a "fair share" that calls for adequate sites for 2,431 housing units for the period from 2007 to 2014, including sites for 164 extremely low income units, 164 very low income units, 424 lower income units, and 549 moderate income units. The City's Housing Element, adopted on October 19, 2010, complies with this RHNA.

2. In 1990, the City established the Housing Trust Fund to pool available funding for affordable housing development. The majority of resources in the Housing Trust Fund have been from federal sources, although state and local sources have been significant as well. Since 1990, the City has provided Housing Trust Funds to affordable housing developments throughout the City, and has revised the Housing Trust Fund Guidelines a number of times, most recently in 2009, to reflect changing market conditions and City priorities.

3. While Housing Trust Funds are a significant source of support for affordable housing developments within the City, Housing Trust Funds alone are not sufficient to cover the costs of providing affordable housing today. Each development must leverage multiple federal and state sources of funding to be financially feasible. Even then, the housing produced is not sufficient to meet local needs for housing for lower income households, as documented in the Housing Element, the Everyone Home Plan adopted in 2006, and the 2010 Consolidated Plan.

4. In 1986 the City adopted an Inclusionary Housing Ordinance, which required, among other things, that a percentage of all new residential rental units in projects of 5 or more units be provided at below market rates for the life of the project. The City of Berkeley's Inclusionary Housing Ordinance has been an important tool in creating affordable housing in the City since its adoption.

5. In 1993, the City established an affordable housing linkage fee on commercial development, designed to mitigate the need for affordable housing it creates.
Income from this linkage fee has been administered through the Housing Trust Fund, mitigating some impact of commercial development.

6. Even in combination with other funding sources, the City's linkage fee and its Inclusionary Housing Ordinance have not been sufficient to fully address local housing needs.

7. A 2009 decision of the California Court of Appeal (Palmer/Sixth Street Properties v. City of Los Angeles (2009) 175 Cal. App. 4th 1396) has further impaired the City's ability to provide for needed - and state-allocated - affordable housing. Palmer holds that the City may not require rents to be limited in rental projects unless it provides assistance to the rental project, thus invalidating the City's Inclusionary Housing Ordinance requirements as to rental projects.

8. Accordingly, the only remaining feasible and practicable option to meet the City's RHNA for below market rate units is to impose an affordable housing mitigation fee on new market-rate rental units, to mitigate the impacts of those new units on the need for affordable housing.

9. New market-rate rental housing, including Density Bonus Units, contributes to the demand for goods and services in the City, increasing local service employment at wage levels which often do not permit employees to afford housing in the City. The "Affordable Housing Fee Nexus Study," dated June 2010 (the "Nexus Study"), prepared by Bay Area Economics, quantifies the impacts of new market-rate rental units on the need for affordable housing in the City.

10. The study estimated the additional spending attributable to each new housing unit in the City, then translated this spending into jobs at a range of income levels. The study estimated the number of households the job-holders would make up, and their household incomes. The City relied on this study to set a fee of $28,000 in 2012.

11. A new Nexus Study, dated March 25, 2015, prepared by Bay Area Economics, and presented to Council supported a maximum fee at $84,400.

B. Definitions.

1. "Density Bonus Project" means a Development project that receives a density bonus pursuant to Government Code Section 65915.

2. "Density Bonus Units" means additional units to which an applicant for a Density Bonus Project is entitled and constructs pursuant to Government Code Section 65915.

3. "Income" means combined annual gross income from all sources.

4. "Low-income Household" shall mean a household whose income is no more than 80% of AMI.
5. "Low-income Unit" means any dwelling unit that is rented, for the life of the Development project in which it is located, at a price affordable to a Low-Income Household of an appropriate size for the dwelling unit, and restricted to households with an income not exceeding 80% of AMI.

6. "Qualifying Units" means those below market-rate units in a Density Bonus Project that entitle the applicant to a density bonus pursuant to Government Code Section 65915.

7. "Very Low-Income Household" shall mean a household whose income shall be no more than 50% of AMI.

8. "Very Low-Income Unit" means any dwelling unit that is rented, for the life of the Development project in which it is located, at a price affordable to a Very Low Income Household of an appropriate size for the dwelling unit, and restricted to households with an income not exceeding 50% of AMI.

9. For purposes of this Section, affordable rents shall be determined in accordance with the provisions of Health and Safety Code section 50105, 50052.5(b)(2), and 50052.5(h), and California Code of Regulations Chapter 25 Section 6918.

10. Tenant-paid utility costs will be deducted from gross rent to determine the rent paid by the tenant. Utility costs will be based on the Berkeley Housing Authority Section 8 utility allowance, or future equivalent standard.

11. Minimum bedroom size will be 70 square feet, consistent with Berkeley's Housing Code (19.40.01O.A, Uniform Housing Code Chapter 5, Section 503.2).

C. The City Council may by resolution adopt an affordable housing impact fee ("Fee"), which shall be imposed on the development of new rental housing in Berkeley, subject to limitations set forth in this Chapter and any additional limitations set forth in the Resolution. All such Fees shall be managed consistent with Government Code Sections 66000 et seq. Up to 10 percent of Fees may be used to pay for administration of the Fee or the Housing Trust Fund or any successor fund with the same purpose, and the remainder shall be deposited in the City's Housing Trust Fund or any successor fund with the same purpose.

1. All Fees shall be paid prior to issuance of a certificate of occupancy at the issuance of a building permit, except as set forth in this subdivision or in the City Council Resolution that adopts the Fee.

2. An applicant for a Development project with 10 or more dwelling units that is subject to the Fee may elect to avoid the Fee by providing, for the life of the project, a number of units equal to 20% of the market rate total units in the project at rental rates affordable to Low-Income and Very Low-Income Households and pay a proportionately reduced Fee as calculated in Section 22.20.065.D.

3. An applicant for a Development project subject to this Section may provide less than 20% of market rate units as Low-Income and Very Low-Income Units and pay a proportionately reduced Fee as calculated in Section 22.20.065.D. In all such
cases the applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all such dwelling units and other information as required for determining compliance with this Section. All such units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the market rate units in the project; and be comparable with the design or use of market rate units in terms of appearance, materials and finish quality. The owner of any units produced under this option must report to the City annually on the occupancy and rents charged for the units.

4. In projects providing more than one below market rate unit (meaning the combination of Low-income Units and Very Low-Income Units), at least 50% of the units shall be affordable to Very Low-income Households. When there is an uneven number of units provided under this ordinance, the majority of the below market rate units shall be Very Low-Income units.

5. Units that meet the criteria established for affordable housing rents in the City's Housing Trust Fund guidelines, as amended shall be exempt from the Fee.

D. Projects that include Low-income and Very Low-Income Units, including Qualifying Units, will qualify to pay a discounted fee if providing fewer than the number of units equal to 20% of the market rate units in the project.

   1. The following equation calculates the proportional discount to the fee based on the portion of units in the project that are provided at Low-Income and Very Low Income rents. The total fee payable for such projects shall be:

   \[[(A-B-C) \times \text{Fee} - \frac{(B+C)}{(A-B-C) \times 20\%}) \times ((A-B-C) \times \text{Fee})]\]

   Where:

   A = Total number of units in the project

   B = Number of Very-Low Income Units provided in the project. C = Number of Low-Income Units provided in the project.

E. The City Council may by resolution opt to vary fees and inclusionary requirements by areas of the city and/or zoning districts.

F. The City Council may by resolution establish fees for the administration of the program established by this Section.

G. Compliance with this Section shall be a condition of approval of all Development projects subject to this Section, whether or not such a condition is expressly included in the Use Permit.

H. Consistent with Government Code 66000, this Section will be revisited every 5 years to confirm whether the purpose, the nexus, and the amount of the fee are still valid.

I. Administrative Regulations. The City Manager or his/her designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross rents, requiring guarantees, entering into and recording agreements with applicants and taking other appropriate steps necessary to assure that the required Low
Income and Very Low Income Units are occupied by Very Low Income and Low Income Households.

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 Council Chambers, 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.
To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Changes in the Affordable Housing Mitigation Fee

RECOMMENDATION

Amend Resolution 67,614-N.S by eliminating the discount in the affordable housing mitigation fee when it is paid at issuance of the building permit pursuant to Berkeley Municipal Code section 22.20.065 and adjusting the fee each two years for inflation by reference to the Construction Cost Index (CCI).

FINANCIAL IMPLICATIONS
Eliminating the discount in the Affordable Housing Mitigation Fee (AHMF) and requiring it to be adjusted by the Construction Cost Index (CCI) every other year would result in additional fees being available in the Affordable Housing Fund.

BACKGROUND
The AHMF is an important source of local funds that assist affordable housing developers leverage addition, non-local funding. The current situation allows an applicant to elect to pay the affordable housing mitigation fee when the Certificate of Occupancy is issued at the amount recommended in the 2015 Nexus Study, but allows an applicant to pay a discounted fee of $30,000 per new unit of rental housing if the fee is paid instead on issuance of the building permit. The Housing Advisory Commission recommended that the AHMF be paid at the full amount adopted by the Council at building permit as is done in San Francisco. Instead, the City Council elected to provide two options, one a discounted $30,000 per market rate unit fee if paid at building permit – an option not discussed in the Nexus Study – or a $34,000 fee if paid when the certificate of occupancy is issued. The time period between building permit and certificate of occupancy is estimated at two to three years; for applicants who chose the option of paying the full amount at certificate of occupancy, the AHMF is without those earmarked funds to spend or leverage during that period.

In addition, the relationship of the fee to housing costs is eroded by inflation. The Affordable Housing Nexus Study is conducted only every five years; even more time may elapse between reconsideration of the fee after the study is completed. In order to
insure that the fee keep up with inflation in rents and sales prices, this resolution adjusts the AHMF based on changes in the CCI every other year on July 1.

ENVIRONMENTAL SUSTAINABILITY
There are no identifiable environmental effects or opportunities associated the action suggested in this report.

CONTACT PERSON
Councilmember Kate Harrison
Council District 4
510-981-7140

Attachments:
1: Resolution
RESOLUTION NO. 67,614-N.S.

CHANGING THE AFFORDABLE HOUSING MITIGATION FEE PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 22.20.065

WHEREAS, on June 28, 2011, the City adopted the Affordable Housing Mitigation Fee Ordinance No. 7,192-N.S., adopting Berkeley Municipal Code section 22.20.065, which would require developers of market rate housing to pay an mitigation fee to address the resulting need for below market rate housing, and offered the alternative to provide units in lieu of the fee; and

WHEREAS, Berkeley Municipal Code 22.20.065 did not establish the fee, but authorized the City Council to adopt such fee by resolution; and

WHEREAS, the City retained Bay Area Economics to complete an updated nexus study for the Affordable Housing Mitigation Fee, and that study, dated March 25, 2015 and reviewed by the Council at a special meeting on July 14, 2015, found a nexus supporting fees of between $34,000 and $84,400 per market rate unit;

WHEREAS, on July 12, 2016, the City adopted Resolution No. 65,920-N.S. setting the fee at $34,000 per market rate unit at the issuance of a certificate of occupancy and establishing criteria for applying the fee;

WHEREAS, the Housing Advisory Commission recommended charging the fee when the building permit is issued as is done in San Francisco to insure funds are available to be leveraged as soon as projects receive their financing, rather than on certificate of occupancy, two to three years later; and

WHEREAS, the Resolution adopted on July 12, 2016 further allowed for a discounted fee of $30,000 if the fee was paid on issuance of building permit; and

WHEREAS, a subsequent study (attached) found that a fee of $44,000 was supportable without unduly impacting the financial feasibility of for-profit housing projects; and

WHEREAS, the nexus between housing costs and the fee is eroded by housing inflation because of the five year time period between nexus studies being conducted and possible longer time before a new fee is adopted;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Section 1 of Resolution No. 65,920-N.S. is hereby amended to read as follows:

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be $34,000 per new unit of rental housing, payable prior to issuance of a temporary or final Certificate of Occupancy at the Issuance of the Building Permit.

2. An applicant for a development project that is subject to the fee may elect to pay the fee at the issuance of the Building Permit, in which case the fee will be discounted to $30,000 per new unit of rental housing. This early payment discount option shall be available only to projects that do not have a complete application at the time this resolution is adopted and submit a complete application by the date 18 months from the adoption of this resolution.
Affordable Housing Mitigation Fee will be adjusted by the Construction Cost Index every other year on July 1.

3. The definition of "new rental housing" excludes units which are offered at no cost to support nonprofit public benefit activities.
INTRODUCTION

The City of Berkeley retained Strategic Economics to test the financial feasibility of a range of affordable housing impact fee levels for new rental housing units. The City first implemented an affordable housing impact fee for new rental development in 2011, and the fee level is currently $28,000 per unit. A recent update to the City’s Affordable Housing Nexus Study¹ (referred to as “2015 Nexus Study” throughout this memorandum) found that the maximum legally justifiable affordable housing fee that could be charged to new rental housing is $84,400 per unit. However, the 2015 Nexus Study also found that the maximum justifiable fee of $84,400 was not financially feasible given current market conditions, and recommended that the City implement a fee level of $34,000 per rental unit based on the results of the financial feasibility analysis. The 2015 Nexus Study did not demonstrate the financial feasibility of other fee levels.

Strategic Economics tested the financial feasibility of additional fee scenarios on new rental development. The methodology for the financial feasibility analysis is based on a commonly used metric of profitability known as “yield on cost.” The remainder of this memorandum describes the key assumptions of the analysis (including the rental housing development prototype), the methodology used to test financial feasibility, and the results of the analysis.

RENTAL HOUSING PROTOTYPE

The assumptions regarding the rental housing prototype are unchanged from the 2015 Nexus Study. As shown in Figure 1, the prototype is a wood-frame building over podium parking with a net residential area of 73,200 square feet. This prototype includes 81 two-bedroom units of 900 square feet, rented at $3,400 per month each. The prototype also includes 6,000 square feet of retail space located on the ground floor. As described in the 2015 Nexus Study, the prototype is based on typical development patterns in the West Berkeley Commercial (C-W) zoning district, an area in which there has been recent development activity and which has additional development opportunity sites. The prototype meets the development standards

¹ City of Berkeley Affordable Housing Nexus Study (Draft), prepared by BAE Urban Economics, March 25, 2015.
called for in the C-W zoning district, including maximum floor area ratio (FAR), height limit, and parking requirements.

**Figure 1: Rental Apartment Prototype**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Size (acres)</td>
<td>1.00</td>
</tr>
<tr>
<td>Maximum Floor Area Ratio (FAR) (a)</td>
<td>3</td>
</tr>
<tr>
<td>Height Limit (Feet) (a)</td>
<td>50</td>
</tr>
<tr>
<td>Number of Floors</td>
<td>4</td>
</tr>
</tbody>
</table>

**Residential Units**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Sq Ft Residential</td>
<td>91,480</td>
</tr>
<tr>
<td>Less: Common Area Residential</td>
<td>(18,296)</td>
</tr>
<tr>
<td>Net Sq Ft for Residential Units</td>
<td>73,184</td>
</tr>
<tr>
<td>Average Unit Size (Sq. Ft.)</td>
<td>900</td>
</tr>
<tr>
<td>Number of Units</td>
<td>81</td>
</tr>
<tr>
<td>Monthly Rent per Unit</td>
<td>$3,400</td>
</tr>
</tbody>
</table>

**Parking for Residential Units**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Parking Ratio (Spaces per Unit) (a)</td>
<td>1.00</td>
</tr>
<tr>
<td>Number of Spaces</td>
<td>81</td>
</tr>
<tr>
<td>Sq Ft per Space</td>
<td>350</td>
</tr>
<tr>
<td>Total Residential Parking (Sq. Ft.)</td>
<td>28,350</td>
</tr>
</tbody>
</table>

**Retail Space**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Square Footage</td>
<td>6,000</td>
</tr>
</tbody>
</table>

**Parking for Retail Space**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Parking Ratio (per 1,000 sq. ft.) (a)</td>
<td>2.00</td>
</tr>
<tr>
<td>Number of Spaces</td>
<td>12</td>
</tr>
<tr>
<td>Sq. Ft. per Space</td>
<td>350</td>
</tr>
<tr>
<td>Total Retail Parking (Sq. Ft.)</td>
<td>4,200</td>
</tr>
</tbody>
</table>

Notes:
(a) Maximum FAR, height limit, and parking requirements specified for the West Berkeley Commercial (C-W) zoning district.
Source: BAE, 2015.

**FEE SCENARIOS**

Strategic Economics tested the financial feasibility of six housing impact fee scenarios on the apartment prototype. The first scenario, Scenario 1, is the no fee scenario and is used to understand the financial feasibility of development in the absence of housing impact fees. Scenario 2 is the current affordable housing impact fee charged by the City of Berkeley of $28,000 per unit. Scenario 3 is the recommended fee level from the 2015 Nexus Study. Scenario 6 is the maximum impact fee that is legally justified by the 2015 Nexus Study. Scenarios 4 and 5 represent the range of potential fee levels between the recommended fee level from the 2015 Nexus Study, and the maximum justified fee. Each fee scenario tested is shown in Figure 2.
Figure 2: Tested Fee Levels

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1 (No Fee)</td>
<td>$0</td>
</tr>
<tr>
<td>Scenario 2 (Current Fee)</td>
<td>$28,000</td>
</tr>
<tr>
<td>Scenario 3 (2015 Nexus Study Recommended Fee)</td>
<td>$34,000</td>
</tr>
<tr>
<td>Scenario 4</td>
<td>$45,000</td>
</tr>
<tr>
<td>Scenario 5</td>
<td>$70,000</td>
</tr>
<tr>
<td>Scenario 6 (Maximum Fee)</td>
<td>$84,391</td>
</tr>
</tbody>
</table>

Source: Strategic Economics, 2016.

**METHODOLOGY**

The financial feasibility of the six fee scenarios was tested using a pro forma model that measures yield on cost (YOC) for the developer or investor. YOC is a measure of developer return that is commonly used to evaluate the financial feasibility of new rental projects. The YOC is calculated by dividing a project’s expected net annual operating income at full lease-up\(^2\) by total development costs (including construction costs, soft costs, and land costs but excluding financing costs). Using YOC as a metric for feasibility allows for a comparison of rates of return among different rental projects, without skewing the results based on the specific financing arrangements (such as the particular combination of debt and equity) that can be highly variable from project to project.\(^3\)

To establish a reasonable threshold for a developer’s rate of return on new rental development projects in Berkeley, Strategic Economics interviewed local developers, reviewed other similar financial analyses in the Bay Area, and reviewed publications on the local and regional real estate market. A common rule of thumb is that the expected YOC for a rental development project should be about 1.5 to 2.0 percentage points higher than the average capitalization rate in the local market.\(^4\) As shown in Figure 3, the average capitalization rate (cap rate) in the East Bay (Alameda and Contra Costa Counties) was approximately 5.0 percent in 2015. Cap rates are lower in San Francisco, where rents (and therefore expected net operating income) are higher. Local developers reported that Bay Area investors expect yields ranging between 5 and 7 percent, depending on the location. Expectations for returns are higher in the East Bay compared to San Francisco because of the differences in market conditions. Developers also reported that construction costs have escalated rapidly, while rental rate increases have begun to slow. This dynamic is likely to cause investors to have higher expectations of yield in the short- to mid-term.

Based on the research described above, projects with a YOC of at least 6.5 to 7.5 percent were considered financially feasible for the purposes of this analysis. Developments with a YOC of less than 6.5 percent are not financially feasible, while projects with a YOC at the lower end of the threshold (at or just above 6.5 percent) are considered marginally feasible.

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\(^2\) Net operating income at full lease-up is calculated as total rental revenues minus operating costs, assuming a stable vacancy rate (5 percent).

\(^3\) Note that the original financial feasibility analysis in the 2015 Nexus Study used developer profit as a percent of cost as the measure of return for both for-sale and rental projects. Yield on cost is more commonly used to measure financial feasibility for rental projects.

\(^4\) A project’s capitalization (or “cap”) rate is the ratio of net operating income divided by property value. Real estate brokerage firms typically calculate the market capitalization rate as the average capitalization rate for projects sold in a given period.
The revenue and cost assumptions used in the pro forma analysis remain unchanged from the 2015 Nexus Study report. These assumptions are shown in Figure 4, including assumptions about hard and soft construction costs, land costs, and financing costs, as well as apartment and retail rental and vacancy rates.

**Figure 3: Estimated Capitalization Rates for Multi-Family Rental Apartments: Bay Area Markets, 2015**

<table>
<thead>
<tr>
<th>Market</th>
<th>Cap Rate</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alameda County</td>
<td>5.1%</td>
<td>Paragon Real Estate Group, &quot;The San Francisco Apartment Building Market in 2015&quot;</td>
</tr>
<tr>
<td>Oakland and Contra Costa County</td>
<td>5.0%</td>
<td>Marcus &amp; Millichap, 2015 National Apartment Report</td>
</tr>
<tr>
<td>San Francisco</td>
<td>4.0%</td>
<td>Marcus &amp; Millichap, 2015 National Apartment Report</td>
</tr>
<tr>
<td>San Francisco</td>
<td>3.8%</td>
<td>Paragon Real Estate Group, &quot;The San Francisco Apartment Building Market in 2015&quot;</td>
</tr>
</tbody>
</table>

**Figure 4: Development Cost and Revenue Assumptions**

<table>
<thead>
<tr>
<th>Cost/Revenue Assumption</th>
<th>Cost</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Costs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land Cost</td>
<td>$110</td>
<td>per square foot</td>
</tr>
<tr>
<td><strong>Residential</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hard Costs</td>
<td>$215</td>
<td>per square foot</td>
</tr>
<tr>
<td>Soft Costs</td>
<td>20%</td>
<td>of hard costs</td>
</tr>
<tr>
<td>Impact Fees (excluding affordable housing fee)</td>
<td>$3,536</td>
<td>per unit</td>
</tr>
<tr>
<td>Parking Costs</td>
<td>$20,000</td>
<td>per space</td>
</tr>
<tr>
<td><strong>Retail</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hard Costs</td>
<td>$150</td>
<td>per square foot</td>
</tr>
<tr>
<td>Soft Costs</td>
<td>20%</td>
<td>of hard costs</td>
</tr>
<tr>
<td>Impact Fees (a)</td>
<td>$0</td>
<td>per square foot</td>
</tr>
<tr>
<td>Parking Costs</td>
<td>$20,000</td>
<td>per space</td>
</tr>
<tr>
<td><strong>Financing Costs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loan-to-Cost Ratio</td>
<td>70%</td>
<td>of total costs</td>
</tr>
<tr>
<td>Interest Rate</td>
<td>6.50%</td>
<td>annual rate</td>
</tr>
<tr>
<td>Loan Fees</td>
<td>2%</td>
<td>of loan</td>
</tr>
<tr>
<td>Loan Period</td>
<td>18 months</td>
<td></td>
</tr>
<tr>
<td>Average Outstanding Balance</td>
<td>60%</td>
<td>of loan</td>
</tr>
<tr>
<td><strong>Revenues</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Rental Residential</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rental Revenue</td>
<td>$3,400</td>
<td>per unit/month</td>
</tr>
<tr>
<td>Vacancy Rate</td>
<td>5%</td>
<td>of revenues</td>
</tr>
<tr>
<td>Operating Costs</td>
<td>30%</td>
<td>of revenues</td>
</tr>
<tr>
<td><strong>Retail</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rental Revenue</td>
<td>$2.25</td>
<td>per sq. ft./month (NNN)</td>
</tr>
<tr>
<td>Vacancy Rate</td>
<td>10%</td>
<td>of revenues</td>
</tr>
</tbody>
</table>

(a) Development impact fees are only charged on retail spaces of 7,500 square feet or more. Source: BAE, 2015.
FINANCIAL FEASIBILITY RESULTS

Figure 5 summarizes the results of the feasibility analysis. Figure 6, below, provides the pro forma analysis for the six fee levels. The feasibility analysis indicates that in the absence of a fee (Scenario 1), development costs for the apartment prototype (before financing) would total $31.6 million. The expected net operating income (NOI) for the building at lease-up is $2.29 million a year. The ratio between NOI and development cost before financing is the yield on cost, which is estimated at 7.25 percent with no fee. This YOC falls within the threshold for feasibility in Berkeley, which is between 6.5 and 7.5 percent.

With the addition of a housing impact fee, the financial feasibility results are as follows:

- Scenario 2, the current fee level ($28,000) brings the YOC to 6.77 percent. This is within the threshold for financial feasibility.
- Scenario 3, the fee level recommended in the 2015 Nexus Study ($34,000) brings the YOC to 6.67 percent. This is within the threshold for financial feasibility.
- Scenario 4, a fee level of $45,000, brings the YOC to 6.50 percent. This is the minimum YOC required for financial feasibility, making the project marginally feasible.
- Scenarios 5 and 6, which represent fee levels of $70,000 and $84,391, bring the YOC to 6.15 percent and 5.97 percent, respectively. These fee levels are not financially feasible.

<table>
<thead>
<tr>
<th>Fee Scenario</th>
<th>Fee Level per Unit</th>
<th>Yield on Cost</th>
<th>Feasibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1 (No Fee)</td>
<td>$0</td>
<td>7.25%</td>
<td>Financially Feasible</td>
</tr>
<tr>
<td>Scenario 2 (Current Fee)</td>
<td>$28,000</td>
<td>6.77%</td>
<td>Financially Feasible</td>
</tr>
<tr>
<td>Scenario 3</td>
<td>$34,000</td>
<td>6.67%</td>
<td>Financially Feasible</td>
</tr>
<tr>
<td>Scenario 4</td>
<td>$45,000</td>
<td>6.50%</td>
<td>Marginally Feasible</td>
</tr>
<tr>
<td>Scenario 5</td>
<td>$70,000</td>
<td>6.15%</td>
<td>Not Financially Feasible</td>
</tr>
<tr>
<td>Scenario 6 (Maximum Fee)</td>
<td>$84,391</td>
<td>5.97%</td>
<td>Not Financially Feasible</td>
</tr>
</tbody>
</table>

Source: Strategic Economics, 2015.
Figure 6: Pro Forma Model Results

<table>
<thead>
<tr>
<th>Costs</th>
<th>per Housing Unit</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Cost</td>
<td>$59,156</td>
<td>$4,791,600</td>
</tr>
<tr>
<td>Residential</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hard Costs</td>
<td>$242,817</td>
<td>$19,668,200</td>
</tr>
<tr>
<td>Soft Costs</td>
<td>$48,563</td>
<td>$3,933,640</td>
</tr>
<tr>
<td>Impact Fees (excluding affordable housing fee)</td>
<td>$3,536</td>
<td>$286,416</td>
</tr>
<tr>
<td>Parking Costs</td>
<td>$20,000</td>
<td>$1,620,000</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$314,917</td>
<td>$25,508,256</td>
</tr>
<tr>
<td>Retail</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hard Costs</td>
<td>N/A</td>
<td>$900,000</td>
</tr>
<tr>
<td>Soft Costs</td>
<td>N/A</td>
<td>$180,000</td>
</tr>
<tr>
<td>Impact Fees</td>
<td>N/A</td>
<td>$0</td>
</tr>
<tr>
<td>Parking Costs</td>
<td>N/A</td>
<td>$240,000</td>
</tr>
<tr>
<td>Subtotal</td>
<td>N/A</td>
<td>$1,320,000</td>
</tr>
<tr>
<td>Total Costs Before Financing and without Affordable Housing Fee</td>
<td>$390,369</td>
<td>$31,619,856</td>
</tr>
</tbody>
</table>

| Revenues |                      |           |
| Rental Residential |                      |           |
| Gross Rental Revenue | $40,800         | $3,304,800|
| Less: Vacancy | -$2,040            | -$165,240 |
| Less: Operating Costs | -$12,240       | -$991,440 |
| NOI | $26,520 | $2,148,120 |
| Retail |                      |           |
| Gross Rental Revenue | N/A             | $162,000  |
| Less: Vacancy | N/A           | -$16,200  |
| NOI | N/A | $145,800 |
| Total Net Operating Income | $28,320 | $2,293,920 |

| Fee Level Testing |                      |           |
| Total Project Cost Before Financing |                      |           |
| Scenario 1 (No Fee) | $0 | $31,619,856 |
| Scenario 2 (Current Fee) | $28,000 | $33,887,856 |
| Scenario 3 | $34,000 | $34,373,856 |
| Scenario 4 | $45,000 | $35,264,856 |
| Scenario 5 | $70,000 | $37,289,856 |
| Scenario 6 (Maximum Fee) | $84,391 | $38,455,527 |

| Financing Costs |                      |           |
| Scenario 1 (No Fee) | $0 | $1,737,511 |
| Scenario 2 (Current Fee) | $28,000 | $1,862,138 |
| Scenario 3 | $34,000 | $1,888,843 |
| Scenario 4 | $45,000 | $1,937,804 |
| Scenario 5 | $70,000 | $2,049,078 |
| Scenario 6 (Maximum Fee) | $84,391 | $2,113,131 |

Continued on following page.
### Total Project Cost with Financing

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Total Project Cost with Financing</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1 (No Fee)</td>
<td>$0</td>
<td>$33,357,367</td>
</tr>
<tr>
<td>Scenario 2 (Current Fee)</td>
<td>$28,000</td>
<td>$35,749,994</td>
</tr>
<tr>
<td>Scenario 3</td>
<td>$34,000</td>
<td>$36,262,699</td>
</tr>
<tr>
<td>Scenario 4</td>
<td>$45,000</td>
<td>$37,202,660</td>
</tr>
<tr>
<td>Scenario 5</td>
<td>$70,000</td>
<td>$39,338,934</td>
</tr>
<tr>
<td>Scenario 6 (Maximum Fee)</td>
<td>$84,391</td>
<td>$40,568,658</td>
</tr>
</tbody>
</table>

### Yield on Cost (NOI/Total Project Cost Before Financing)

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Yield on Cost (NOI/Total Project Cost Before Financing)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1 (No Fee)</td>
<td>$0, 7.25%</td>
</tr>
<tr>
<td>Scenario 2 (Current Fee)</td>
<td>$28,000, 6.77%</td>
</tr>
<tr>
<td>Scenario 3</td>
<td>$34,000, 6.67%</td>
</tr>
<tr>
<td>Scenario 4</td>
<td>$45,000, 6.50%</td>
</tr>
<tr>
<td>Scenario 5</td>
<td>$70,000, 6.15%</td>
</tr>
<tr>
<td>Scenario 6 (Maximum Fee)</td>
<td>$84,391, 5.97%</td>
</tr>
</tbody>
</table>

See Figure 4 for development cost and revenue assumptions.

Source: BAE, 2015; Strategic Economics, 2015.
The Berkeley City Council will conduct a public hearing on June 13, 2017 at 7:00 p.m. in the City Council Chambers, 2134 Martin Luther King, Jr. Way to consider the following proposed changes to the Affordable Housing Mitigation Fee:

1. The Affordable Housing Mitigation Fee authorized and provided for by BMC Section 22.20.065 shall be $34,000 if paid at first construction document and up to $37,000 per new unit of market rate rental housing, payable at the Issuance of the Building Permit.

2. The Affordable Housing Mitigation Fee will be automatically adjusted every other year on July 1st by the annual percentage increase shown in the California Construction Cost Index published by the California Department of General Services (https://www.documents.dgs.ca.gov/resd/PMB/CCCI/Old/cccitable_2017/CCCIMasterListing_5-2017.pdf), so long as the automatic adjustment does not cause the fee to exceed the maximum fee established by the most recent Nexus study.

The City Council will also consider the adoption of an ordinance that would revise Berkeley Municipal Code Section 22.20.065 pertaining to the Affordable Housing Mitigation Fee to increase the percentage of below market rate units needed to reduce or avoid the Affordable Housing Mitigation Fee.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of June 1, 2017.

For further information, please contact Zach Cowan, City Attorney, at (510) 981-6950.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: June 2 and June 9, 2017 – The Berkeley Voice
Published pursuant to Government Code 6062a.

I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on June 1, 2017.

Mark Numainville, City Clerk

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.