Housing Advisory Commission

HOUSING ADVISORY COMMISSION

AGENDA

Special Meeting **Thursday, March 3, 2022** **7:00 pm**	Mike Uberti, Secretary HAC@cityofberkely.info

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the Housing Advisory Commission will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device use: https://us06web.zoom.us/j/86492044529. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the “raise hand” icon on the screen.

To join by phone: Dial US: 1-669-900-6833 and Enter Meeting 864 9204 4529. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Housing Advisory Commission by 5:00 p.m. the day before the meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

All agenda items are for discussion and possible action.

Public comment policy: Members of the public may speak on any items on the Agenda and items not on the Agenda during the initial Public Comment period. Members of the public may also comment on any item listed on the agenda as the item is taken up. Members of the public may not speak more than once on any given item. The Chair may limit public comments to 3 minutes or less.

1. **Roll Call**
2. **Agenda Approval**
3. **Public Comment**
4. **Approval of the February 3, 2022 Special Meeting Minutes** (Attachment 1)
5. **Discussion and Possible Action on the City of Berkeley’s Draft Annual Action Plan (AAP) PY 2022 for Department of Housing and Urban Development (HUD)** – All/Staff (Attachment 2)

6. **Discussion and Possible Action on Citywide Affordable Housing Requirements** – All/Staff (Attachments 3-6)

7. **Discussion and Possible Action to Appoint a Housing Trust Fund Subcommittee** – All/Staff

8. **Update on Council Items (Future Dates Subject to Change)**

9. **Announcements/Information Items**
   a. Referring the Civic Arts Commission's *affordable housing for artists in Berkeley* Report and other Artist Live, Work and Live-Work opportunities to the Housing Element Update (Attachment 7)

10. **Future Items**
    a. Affordable Housing Preference Policy

11. **Adjourn**

Attachments

1. Draft February 3, 2022 Special Meeting Minutes
2. Rhianna Babka, HHCS, City of Berkeley's Draft Annual Action Plan (AAP) PY 2022 for Department of Housing and Urban Development
3. Alisa Shen, Planning, Citywide Affordable Housing Requirements
4. Draft Affordable Housing Requirements Ordinance
5. Draft Affordable Housing Requirements Resolution
6. Street Level Advisors, Updating Affordable Housing Requirements for The City of Berkeley, CA Analysis and Recommendations
7. January 25, 2022 Council Report - Referring the Civic Arts Commission's *affordable housing for artists in Berkeley* Report and other Artist Live, Work and Live-Work opportunities to the Housing Element Update

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 Secretary of the commission. 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 Secretary for further information.

Written communications addressed to the Housing Advisory Commission and submitted to the Commission Secretary will be distributed to the Commission prior to the meeting. This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.

COMMUNICATION ACCESS INFORMATION:

	To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

HOUSING ADVISORY COMMISSION
Thursday, February 3, 2022

Housing Advisory Commission

Time: 7:03 pm
Held via Video and Teleconference

Secretary – Mike Uberti
HAC@cityofberkeley.info

DRAFT MINUTES

1. **Roll Call**
   Present: Nico Calavita, Sara Fain, Xavier Johnson, Libby Lee-Egan, Mari Mendonca, Debbie Potter, Alexandria Rodriguez, Ainsley Sanidad, and Leah Simon-Weisberg.
   Absent: None.
   Commissioners in attendance: 9 of 9
   Staff Present: Mike Uberti and Anna Cash.
   Members of the public in attendance: 14
   Public Speakers: 11

2. **Agenda Approval**
   Action: M/S/C (Mendonca/Fain) to approve the agenda.
   Vote: Ayes: Calavita, Fain, Johnson, Lee-Egan, Mendonca, and Potter. Noes: None. Abstain: None. Absent: Rodriguez (unexcused), Sanidad (unexcused), and Simon-Weisberg (unexcused).

3. **Public Comment**
   There were two speakers during public comment.

4. **Approval of the February 3, 2022 Special Meeting Minutes**
   Action: M/S/C (Potter/Lee-Egan) to accept the February 3, 2022 Special Meeting Minutes.
   Vote: Ayes: Fain, Johnson, Lee-Egan, Potter, Sanidad, and Simon-Weisberg. Noes: None. Abstain: Calavita and Mendonca. Absent: Rodriguez (unexcused).

5. **Officer Elections**
   Action: M/S/C (Fain/Johnson) to elect Commissioner Lee-Egan as Chair.
   Vote: Ayes: Fain, Johnson, Lee-Egan, Mendonca, Potter, Rodriguez, Sanidad, and Simon-Weisberg. Noes: None. Abstain: Calavita. Absent: None.

   Action: M/S/C (Simon-Weisberg/Rodriguez) to elect Commissioner Mendonca as Vice Chair.
   Vote: Ayes: Fain, Johnson, Lee-Egan, Mendonca, Potter, Rodriguez, Sanidad, and Simon-Weisberg. Noes: None. Abstain: Calavita. Absent: None.

6. **Receive Presentation on a Housing Preference Policy**
   Public Comment: 9

7. **Update on Council Items (Future Dates Subject to Change)**

8. **Announcements/ Information Items**

9. **Future Items**

10. **Adjourn**
    Action: M/S/C (Johnson/Mendonca) to adjourn the meeting at 9:13 pm.
    Vote: Ayes: Calavita, Fain, Johnson, Lee-Egan, Mendonca, Potter, Rodriguez, Sanidad, and Simon-Weisberg. Noes: None. Abstain: None. Absent: None.

Approved:
______________________, Mike Uberti, Secretary

Health Housing and
Community Services Department
Housing & Community Services Division

MEMORANDUM

To: Housing Advisory Commission (HAC)

From: Rhianna Babka, HCS, Community Services Specialist III

Date: March 3, 2022

Subject: **Draft Annual Action Plan (AAP) for Federal Program Year (PY) 2022 Including the Fred Finch Youth Center (FF) Application for the City of Berkeley's Community Development Block Grant (CDBG) Public Facility Improvement Project**

Each year, HCS staff prepares and submits an Annual Action Plan (AAP) which identifies how the City plans to spend federal Department of Housing and Urban Development (HUD) funds. This report is typically due in May of each year. The current draft plan outlines how the City of Berkeley will spend its Community Development Block Grant (CDBG), HOME Investment Partnership Program (HOME) and Emergency Solutions Grant (ESG) funds for the federal program year (PY) 2022 which corresponds to the City's fiscal year (FY) 2023. The HAC acts as the advisory commission to Council on the allocation of CDBG, HOME and ESG funds.

At this meeting on March 3, 2022, the HAC shall consider, discuss and make a recommendation to Council on the PY22 AAP. The final draft AAP will then be submitted for the April 26, 2022 Council meeting, which is also a Public Hearing on the AAP.

Below is the link to the webpage where the draft Annual Action Plan will be made available on Monday, February 28, 2022. This is the same link where you can find the final plan upon Council adoption, and prior plans.

Link: https://www.cityofberkeley.info/ContentDisplay.aspx?id=12160

Current Situation

The City of Berkeley has not yet received notice of its entitlement amount, therefore the budget shown in the draft AAP is an estimate based on PY21 entitlement. The projected budget anticipates a 2% reduction in CDBG funding, which is standard practice to allow for the likelihood that more jurisdictions will become eligible for this funding, and both HOME and ESG are estimated as unchanged. See Attachment 1 in Draft PY22 AAP for projected amounts and distribution.

HOME Funds
The budget in the AAP sets aside approximately 5% of HOME funds for CHDO operating funding. This is the maximum amount available under HOME regulations and has been budgeted at this level for over a decade (except during PY20, when HOME issued a waiver during COVID-19 to temporarily increase it up to 10%).

ESG Funds
The City is proposing continued use of ESG funds for the eligible categories of Rapid Rehousing and Emergency Shelter/Outreach, and with a small amount supporting the City's contribution to the Homeless Management Information System (HMIS).

CDBG Funds
The draft CDBG budget includes estimated program income and unused funds and proposes allocations for eligible categories and activities.

The allocations also include the HAC's recommendations, and Council-adopted, four-year (PY19-23/FY20-24) community agencies awards for both public and housing services. Additionally, under the Public Facility Improvement Program category, the CDBG budget includes a line item for Fred Finch Youth Center's Turning Point Housing Program's facility. If additional CDBG funds are made available (higher than anticipated entitlement award, program income and unused funds) the funding would then be placed into the Public Facility Improvement budget line and released into the rolling NOFA.

<u>Background on CDBG Public Facility Improvement Program</u>
CDBG funds are used for public facilities located within Berkeley that are open to the public and primarily serve low-to-moderate income Berkeley residents. Expenditures for public facilities have included health and safety repairs, improving accessibility access and/or energy efficiency improvements. In December 2020, the Housing and Community Services (HCS) Division released the Public Facility Improvement Notice of Funding Availability (NOFA) and began accepting applications under the new rolling program on a first come first serve basis until all annual funds had been allocated. Facility application review and recommendations are typically done first by a CDBG subcommittee, however, with current COVID-19 related restrictions the subcommittee is currently not active so the HAC is being requested to make a recommendation on the current application as part of the AAP.

On May 12, 2021 HAC allocated all available CDBG Public Facility Improvement funding to West Berkeley Service Center WBSC. However, prior to the close of the NOFA and pending the HAC's recommendation for the WBSC, Fred Finch Youth Center submitted a Public Facility Improvement application for their agency's Turning Point Housing Program on April 22, 2021 (Exhibit A).

The Fred Finch Youth Center application was placed on the CDBG Public Facility Improvement funding's waitlist until further funding was made available. As funds are becoming available in PY22, the application was reviewed by staff who have confirmed that the project is CDBG eligible and will have a positive impact on the community.

<u>Current Application – Fred Finch Youth Center's Turning Point Program</u>
The Fred Finch Youth Center applied for CDBG facility funds to support its Turning Point Housing Program (Turning Point) located at 3404 King Street, Berkeley, CA 94703. The applicant notes that Turning Point provides temporary housing to approximately 12 at-risk young adults whom HUD describes as 'chronically homeless'. The program provides temporary yet stable housing with shared rooms, daily meals, and transportation assistance. Support services are provided by staff who are available either on-site or by phone. These services include case management, individual, group and family therapy, assistance in obtaining and maintaining permanent housing, life skills instruction, crisis intervention, and outpatient psychiatric care.

The applicant is currently requesting $377,403.95 to rehabilitate the facility and accommodate this program. The scope includes ADA updates for the kitchen and restrooms that include countertop replacement, new flooring, mold/dry rot removal, and new fixtures. There will also be an evaluation of the foundation for possible repair, replacement of the security gate, an HVAC system update, and replacement of sewer pipes.

If not funded, the applicant describes how "a facility in ill-repair is counterproductive to [the] work at Turning Point, and to the social project of uplifting young people in need of support."

Eligibility and Recommendation:
In January of 2022, HCS staff requested that Fred Finch Youth Center provide a memo with updates, corrections, and clarifications from their 2021 application, and their responses are summarized below. Upon review of Fred Finch Youth Center's memo and supporting documentation (Exhibit B), HCS staff have confirmed that the project is CDBG eligible and will have a positive community impact by providing a stable place for homeless transition-aged youth.

The Housing and Community Services Division is requesting that the HAC recommend to Council that the Fred Finch Youth Center is awarded $377,403.95 of the PY 2022 CDBG Public Facility Improvement funding for the Turning Point Housing Program.

Exhibit A: Original Fred Finch Turning Point Public Facilities Improvement Project
Exhibit B: Application Fred Finch Memo Providing Requested Updates To The Original Application

Help with this page

City of Berkeley Housing & Community Services Department
2180 Milvia Street
Berkeley, CA 94704
Contact: Rhianna Babka, RBabka@cityofberkeley.info 510.981.5410

Application Status
Status: In Review
Check when complete:
☐ Approved for Funding
GF Amount:
CDBG Amount:
ESG Amount:
MHSA Amount:
CSBG Amount:
Meas-E Amount:
HOME Amount:
PCEI Amount:
S+C Amount:
GF-WS Amount:
GF-HHS Amount:
BMH Amount:
Meas-E Res Amount:
Childcare Mit Amount:
☐ Subrecipient Budget Adjustment
☐ Complete & Approved

Comments:

Return to Main Page

City of Berkeley - CDBG Request for Proposals - FY 2021 Application

Agency: Fred Finch Youth Center
Program: Turning Point Housing Program
Click Here to read the City of Berkeley RFP.
Click Here for spell check instructions.

Save and Continue
A. General Information

Agency Name:	Fred Finch Youth Center	
Program/Project Title:	Turning Point Housing Program	
Agency Date of Incorporation:	09/23/1973	Articles_of_Inc._FFYC.pdf BYLAWS_-AMENDED_2009-05-26.pdf
Agency Office Street Address:	3800 Coolidge Ave.	
Agency Office City:	Oakland	Zip: 94602
Executive Director Name:	Tom Alexander, LCSW	
Executive Director's Email Address:	tomalexander@fredfinch.org	
Executive Director Phone Number:	482-2244x5214	
Application Contact Person Name:	Julie Henderson	
Application Contact Person's Email: *(Contact person must respond to questions within one business day.)*	juliehenderson@fredfinch.org	
Application Contact Person's Phone:	510-406-8717	
Project Manager:	Timothy Trickett-Robles	PM resume: Trickett-Robles-Resume-Short-Form.pdf
Project Manager phone:	510-506-3046	
Project Manager email:	timothytrickett@fredfinch.org	
DUNS number You can obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) Number by registering at http://fedgov.dnb.com/webform	073933434	
Tax-exempt 501(c)(3) status: more info	(•) Yes ( ) No	501c3_letter.pdf
Does the agency own the project site?	(•) Yes ( ) No	3404_King_St_Preliminary_Title_Report_-_NCAL.pdf Title_Report_on_3404_King_Street_05.14.2014.pdf
Board resolution authorizing submission of application		Auth-to-Submit-Oak-CBDG-Prop-Resolution-2021-03.pdf

TOTAL FUNDING REQUESTED:	$226,883	
Total Other Funding Leveraged for the Project:	$0	Leveraged Percent: 0%
Total Project Value:	$226,88:	

B. Project Description and Permit Review
Full Scope: quotes_for_TP.pdf
TP_quote.docx
King_St_KItchen_F.F.Y.C-_Revised__PDF.pdf
Asset-Management-Plan-Turning-Point.docx
Line_Item_budget_-_TP_CDBG.xlsx

1. Detailed Description of Scope (1,000 character limit):
Refer to our program FAQ for additional guidance on writing your scope. The FAQ provides a sample scope.

HAC 03/03/2022
Attachment 2

The categorized scope of work on the facility includes work to the following areas/components of the building:
Kitchen: Removal and replacement of all cabinets, countertops, appliances and flooring to ensure ADA compliance. Repair of any/all mold or dry rot identified will be included as well as necessary plumbing and electrical upgrades.
Bathroom: Demolition and rebuild of ground-floor bathroom to ensure ADA compliance including replacement of all tile, flooring and fixtures as well as repair of any/all mold or dry rot identified.
Sewer Lateral: Replacement of sewer lateral piping to obtain City of Berkeley sewer certificate.
Security Gate: Replacement of current manual, rear-building access gate to include adequate security
Fire Prevention/Sprinkler System Upgrade: Upgrade of current fire protection system including 5 year performance test to include complete fire sprinkler system replacement.
Foundation Repair: If evaluation confirms need for foundation re-enforcement

You have -14 characters left.

Please **Upload** your drawings or plans for this project.

2. Mark all categories that apply to this project: Refer to program eligibility requirements in the NOFA.	☑ ADA Compliance ☑ Energy Efficiency ☑ Health and Safety Code Issues
3. If the project includes ADA improvements, has the project site been assessed by a Certified Access Specialist (CASp) and is the proposed project included in the CASp ADA improvement plan?	○ Yes (**Upload CASp Plan**) ◉ No ○ N/A
4. Will this project require a permit?	◉ Yes ○ No
a. This project requires the following permits (check all that apply):	☐ Building ☐ Electrical ☐ Plumbing ☐ Other: ☐ N/A. No permit required ☑ Unknown
b. If this project requires permits, does the project scope include ADA improvement at costs equal to or more than 20% of the total project value? (Enter N/A if the question is not applicable.)	◉ Yes ○ No ○ N/A. Project does not require a permit and is exempt from the 20% cost allocation rule.
5. Has this scope been reviewed by City of Berkeley Permit Service Center staff?	○ Yes ◉ No
b. Please provide a brief description as to why the permit service center has not reviewed your plans:	We have been in the process of obtaining bids and scoping the need for work for the past several months which is a process that has been severely delayed due to COVID restrictions as well as staffing challenges. Once this application is submitted, we are planning to begin the permitting process with our chosen contractor, Advanced Construction. Please note: some permits for the project will be submitted upon project and funding approval for specifics including sewer lateral repair, security gate installation and fire system improvements.
By submitting this proposal without consult with the Permit Service Center (PSC) I understand that my application will not be reviewed by City staff until the project scope has been reviewed by the PSC and determination of permits has been made.	◉ Yes, I agree. ○ This project does not require a permit.
6. Does the zoning for the property permit the proposed project?	◉ Yes ○ No If not, what level of planning review is needed:

7. Please complete the following timeline table for this project. Complete applications will be reviewed monthly and if awarded, funding will be available upon contract execution.

Design Completion Date:	04/01/2021
Permits Approval Date	07/01/2021
Bid Open Date:	12/01/2020
Construction Start Date:	08/02/2021
Construction End Date:	12/31/2021

Additional comments: All of these dates are reliant on funding availability and timing of

8. Describe in detail your plan for assessing lead-based paint.

It is the policy of Fred Finch Youth & Family Services (FF) to prevent staff, visitors, and participants from exposure to lead paint. The State of CA banned lead paint in all construction in 1978, so this policy applies only to buildings built prior to 1978, where participants reside, and where lead paint is known to exist or whose lead paint status is unknown. FF incorporates precautionary lead-based paint maintenance in accordance with Sec. 35.1355(a) into regular building operations. These techniques include not chipping, flaking, crushing, or sanding paint into dust; it also includes painting over paint to encapsulate it. When stabilization activities occur, if needed due to deterioration, FF obtains clearance when necessary in accordance with Secs. 35.1330(a) and (b). Notice to occupants of any stabilization activities and the results of any clearance examination is provided.

You have 2083 characters left.

C. Agency Administrative and Fiscal Capacity

1. Does your agency or project staff have experience in developing, designing, sponsoring and/or managing other similar construction projects?

◉ Yes. In the box below please describe both the person's experience and estimate FTE that will be allocated to implementing this project. You have previously identified Timothy Trickett-Robles as your Project Manager Trickett-Robles-Resume-Short-Form.pdf

○ No. Please explain:

Timothy-Trickett Robles is the Senior Director of Administration with well over a decade of experience leading both the Administration and Facilities Departments for Fred Finch Youth & Family Services. In that time, the agency has successfully executed several high level capital improvement projects including the construction of our Rising Oaks and New Yosemite residential programs as well as previous CDBG grant funding awarded projects for our residential Rising Oaks and Turning Point Programs.

You have 488 characters left.

2. Projects may be awarded less than the amount originally requested. Please explain how reduced funding would affect the scope of the project.

If funding for this project is not awarded in full, Fred Finch leadership will work with contractors on the project to determine the dire aspects of this project to prioritize completion. While Fred Finch does have adequate reserves to ensure necessary building maintenance projects are completed as necessary, we are mindful of the difficulties presented to our organization and the program in response to COVID restrictions and will plan according to agency budgeting capacity as needed. The delay or complete rejection of any CDBG funding will dramatically affect the timeline for our capacity to begin/complete this project.

You have 2360 characters left.

3. Is there a long-term asset management plan in place for the building that will be improved including a maintenance reserve?

◉ Yes. In the box below please describe how the current request fits into the plan/schedule.

○ No. Please describe the agency efforts to develop such a plan and ensure resources for building improvements.

Under the 'State of Assets' section of the Turning Point Asset Management Plan, it is indicated that the facility is in dire need of cosmetic and structural improvements to ensure the long-term sustainability and proper upkeep of the facility. This proposal is in response to fulfill the needs identified within the plan. The Turning Point Long Term Asset Plan has been uploaded in the documents section for your review.

You have 573 characters left.

Save and Continue

D. Project Bid and Cost Detail

All construction projects must have a detailed scope of work from a licensed general contractor or subcontractor, engineer or a licensed architect. (example).

Prior to obtaining three bids you must develop a sufficiently detailed scope of work that includes reference to federal prevailing wage and labor requirements in order for contractors to provide you with the most accurate estimate. As part of your application, you must submit three (3) bids (one cost estimate for City of Berkeley Department applicants) with your application for any work that will be undertaken. In order to be eligible for funding, all bids must comply with the below items:

A. Rehabilitation funded with CDBG and exceeding $2,000 is subject to the Davis-Bacon Act, which includes the requirement of payment of federal prevailing wages to employees. These wages must be included in the bid documentation you submit with this proposal.
   Find Davis Bacon Wage Determination for Alameda County here:http://www.wdol.gov/dba.aspx
B. Be no more than 90 days old.

If you are applying for funds for an amount between $100,000 and $200,000 you may have the option of conducting a sealed bid as part of your cost estimate and application, thus giving you the possibility of using these bids for contractor awards. If you are interested in doing this please contact the Program Administrator for more information and to accurately estimate the timeline.

1. Describe how your agency reached out to Minority- and Women-Owned businesses in obtaining the below bids and how it intends to reach out to these businesses for updated bids, if awarded. Review: https://www.acquisition.gov/sites/default/files/current/far/compiled_html/subpart_19.15.html

Fred Finch Youth and Family Services (FF) is an Equal Opportunity Employer. FF does not discriminate on the basis of race, religion, color, sex, gender identity, sexual orientation, age, non-disqualifying physical or mental disability, national origin, veteran status or any other basis covered by appropriate law. All employment and professional service bids are decided on the basis of qualifications, merit, and business need.

You have 2559 characters left.

Complete the Table Below (you can add additional lines or tables as needed for different phases of the project and/or for different scopes of work). Please be sure to:

A. Include an estimate of all permit and other City of Berkeley fees,
B. Include a minimum of 20% of total project value for ADA requirements, if not already included in project scope and costs.

Number of Lines or Items Needed: 1

Budget Items	Bid #1 Contractor: Advanced Construction Attached Bid: quotes_for_TP.pdf TP_quote.docx King_St_KItchen_F.F.Y.C-_Revised__PDF.pdf Asset-Management-Plan-Turning-Point.docx Line_Item_budget_-_TP_CDBG.xlsx	Bid #2 Contractor: Sewer Master Attached Bid: (Upload)	Bid #3 Contractor: R&S Erection of Richmond, I Attached Bid: (Upload)
Contractor Total	$150,500	$5,950	$16,205
Contingency (10%)	$15,050	$595	$1,621
Project Subtotal	$165,550	$6,545	$17,826
20% Allowance for ADA	$30,100		
Permits & Fees	$21,000		
Project Management	$8,820	$0	$0
TOTALS	$210,420	$5,950	$16,205

E. Community Services Description

Applications must provide evidence that the projects have a significant impact to program participants tied to one of the three project areas (see B.2 above) and that the project is meeting the minimum income limits for program beneficiaries.

1. Describe the services provided at this facility. Please include the number of persons served and on average how many hours unduplicated participants spend at your facility each year.

HAC 03/03/2022
Attachment 2

Turning Point is a service that houses at-risk young adults who HUD describes as 'chronically homeless'. Turning Point provides temporary housing for a maximum of 12 homeless youth for up to twenty-four months in a facility in the City of Berkeley. The program provides temporary yet stable housing with shared rooms, daily meals and transportation assistance. Support services are provided by staff who are available either on-site or by phone. These services include case management, individual, group and family therapy, assistance in obtaining and maintaining permanent housing, life skills instruction, crisis intervention and outpatient psychiatric care. Beyond providing shelter, our supportive services ensure that Turning Point residents secure independent living skills and a stable income while they heal from trauma, preparing them to launch into a healthy and stable future. By supporting transition age youth in this capacity, this program is not only providing aid to those in our community who need it most but helping to build a stronger community by empowering the people within it. Through our empathetic approach, we build trust and make a difference in individuals' lives and thus transform the outcomes of homeless youth and change the dialogue on poverty and homelessness.
The average length of stay is approximately 12-months. In FY 2019, we served 18 unduplicated participants.

You have 1553 characters left.

2. How will this facility improvement project impact your program?

While we are incredibly proud of the support this program provides, Turning Point participants for growth and healing, the building in which our program is housed is in increasing need of attention. The kitchen shared by our participants at Turning Point is in dire need of repair, as the countertops, flooring, and general improvements. Immediate attention is needed to bring the facility up to ADA compliance; we also intend to improve our energy efficiency in recognition of the climate crisis we are all facing; and ensure that the building meets city Health and Safety codes for the well-being of our participants and staff alike.

You have 2347 characters left.

3. Why is this work important for your program participants? If this project is not awarded how will this impact your participants?

If this project is not awarded, Turning Point will continue to be a robust and successful provider of service and stability for homeless transition-age youth. The facility in which Turning Point is housed, however, is in immediate need of attention. In order to ensure the safety of the young adults that we serve, and to maintain a modern facility that is energy efficient and ADA-compliant, renovations must take place in the immediate future.
Additionally, the value of a clean, well-cared for facility to house this TAY transitional housing program cannot be understated. Helping vulnerable youth in building a foundation for healthy and stable lives is best done in an environment that shows how much we value them. A facility in ill-repair is counterproductive to our work at Turning Point, and to the social project of uplifting young people in need of support.

You have 2105 characters left.

4. Beneficiaries - This facility serves: (check one)

○ 1. A geographic area (describe the boundaries of the geographic area or census tracts, if known)

Find Census Tracts: Click Here

---------------- OR ----------------

◉ 2. Low and Moderate Income Clients as shown in the table below:

Program Participants Income	Prior Year 7/2019-6/2020	Projected Current Year 7/2020-6/2021	Projected 7/2021-6/2022
Total Number served (all participants)	16	12	14
Program Participants NOT residing in Berkeley			
Program Participants residing in **Berkeley**	16	12	14
Income Levels of Program Participants (**Berkeley only**)			
Above Moderate Income (Above 80% AMI)			
Moderate Income (51 % - 80% of AMI)			
Low Income (31 % - 50% of AMI)			
Extremely Low-Income (Poverty - 30% AMI)			
Poverty Level and Below	16	12	14

View AMI Table

5. Will there be a need for relocation of residents or staff? ○ Yes ◉ No

F. Attachments

Attachments

(Upload Instructions)

ALL attachments below are REQUIRED in order to submit your application, and your application WILL NOT be able to be submitted with missing attachments!

Please take this into consideration when timing your submission of this application. The documents you need to upload are checked below. If you have other attachments you would like to include, please check one of the "Other" boxes below and identify the Attachment in the box. If you are unable to upload any of the attachments, contact Mary-Claire Katz (510.981.5414)

- ☑ Articles of Incorporation — Articles_of_Inc._FFYC.pdf
- ☑ Agency By-Laws — BYLAWS_-AMENDED_2009-05-26.pdf
- ☑ Letters from Internal Revenue Service and Franchise Tax Board establishing sponsor's tax-exempt status — 501c3_letter.pdf
- ☑ Board resolution authorizing submission — Auth-to-Submit-Oak-CBDG-Prop-Resolution-2021-03.pdf
- ☑ Project Manager Resume — Trickett-Robles-Resume-Short-Form.pdf
- ☑ Copy of property title or lease — 3404_King_St_Preliminary_Title_Report_-_NCAL.pdf, Title_Report_on_3404_King_Street_05.14.2014.pdf
- ☑ Color photographs of project location along with photos of interior areas to be modified — Picture_appendix_-_TP_CDBG.docx
- ☑ Full Scope — quotes_for_TP.pdf, TP_quote.docx, King_St_KItchen_F.F.Y.C-_Revised__PDF.pdf

HAC PAGE 9

HAC 03/03/2022
Attachment 2

Asset-Management-Plan-Turning-Point.docx
Line_Item_budget_-_TP_CDBG.xlsx

- [x] Table 4.1 - Bid #1 - Advanced Construction
- [x] Table 4.1 - Bid #2 - Sewer Master
- [x] Table 4.1 - Bid #3 - R&S Erection of Richmond, Inc.
- [ ] ADA Project CASp Site Assessment
- [ ] Architectural floor plans and specifications — TP_First_floor.png, TP_Second_Floor.png
- [ ] Other Line Item Budget — Line_Item_budget_-_TP_CDBG.xlsx
- [ ] Other Completed PDF of prop — Turning_Point_CDBG_Application_and_App.pdf

Click here to go to the Upload Documents page (Your application will be saved)

If your organization is awarded funding, you will be required to submit some or all of the following documents prior to award of any city funds: * Documentation of Liability Insurance (compliant with all City requirements) * Drug-Free Workplace Certification * Anti-Lobbying Certification * City of Berkeley Business License * Evidence of Workers Compensation * Living Wage Form (as applicable) * Americans with Disabilities Act compliance certifications * Sanctuary City Compliance Statement * Nuclear Free Berkeley Disclosure * Workforce Composition * AND * Equal Benefits Certification (as applicable).

Report Submitted by: Julie Henderson Date: 04/22/2021

Return to Program As Draft

Click above to return report to Draft status, and please enter a reason in the box below

Reviewed and accepted by :
Sign Here: Certify Report as Complete

Reset

xyz

City Data Services - San Mateo, CA

Fred Finch
Youth & Family Services

MEMO

Date: February 22, 2022

To: City of Berkeley Housing and Community Services

From: Fred Finch Youth Center dba Fred Finch Youth & Family Services (FF)

Subject: Updates to original CDBG proposal for the Turning Point housing program in Berkeley, CA

This document addresses requested updates by the City of Berkeley in reference to the original application to the City of Berkeley Public Facility Improvement Project submitted by FF in April of 2021 for the Turning Point Housing Program located at 3404 King Street in Berkeley, California.

This memo is a follow-up to the memo previously submitted by FF on February 3, 2022, which is also attached to the email submission for reference.

Total Requested Amount based on updated bids: $377,403.95

Turning Point - CDBG Line Item Budget			
(Updated February 2022)			
Work Scope			**Bid Details**
Kitchen Update	$44,900.00		Advanced Construction
Bathroom 1 Update (1st Floor)	$38,800.00		Advanced Construction
Bathroom 2 Update (2nd Floor)	$49,000.00		Advanced Construction
Bathroom 3 Update (2nd Floor)	$18,000.00		Advanced Construction
Foundation Evaluation and possible work order	$82,000.00		Advanced Construction
Sewer Lateral Compliance	$7,200.00		Harry Clark Plumbing and Heating
Security Gate Update	$18,825.15		R&S Erection of Richmond
HVAC Update	$14,300.00		Air Mechanics
Contigency, design, inspection & permit fees (25% of work order)	$68,256.29		
Project Management Fee (210 Hours @ $42 per hour)	$8,820.00		
General Contractor's Fee (10% of work order)	$27,302.52		
Total Requested Amount	**$377,403.95**		

Updated Bids with Line-Item Budget Narrative:

Please note, all detailed bids are attached to the email submission of this memo.

Advanced Construction:

Kitchen: Removal and replacement of all cabinets, countertops, and flooring to ensure ADA compliance. Additionally, repair of any/all mold or dry rot identified will be included as well as necessary plumbing and electrical upgrades. Purchase of appliances is not included in the kitchen scope of work. - $44,900.00

Bathroom 1: Demolition and rebuild of ground-floor bathroom to ensure full ADA compliance including replacement of all tiles, flooring and fixtures as well as repair of any/all mold or dry rot identified. - $38,800.00

Bathroom 2: Demolition and rebuild of top-floor (common use) bathroom to ensure ADA compliance including replacement of all tiles, flooring and fixtures as well as repair of any/all mold or dry rot identified. - $49,000.00

Bathroom 3: Demolition and rebuild of top-floor (tenant) bathroom to ensure ADA compliance including replacement of all tiles, flooring and fixtures as well as repair of any/all mold or dry rot identified. - $18,000.00

Foundation Evaluation and possible repair: Removal and replacement of stucco on outer structure to properly evaluate and investigate need for foundation repair. In the event the evaluation confirms need for foundation re-enforcement, the cost associated with underpinning is included in the final line-item budget, however if work is not needed, this component of the project will not be included. - $82,000.00

Harry Clark Plumbing and Heating:

Sewer Lateral: Replacement of sewer lateral piping to obtain City of Berkeley sewer certificate. - $7,200.00

R&S Erection of Richmond

Security Gate: Replacement of current manual, rear-building access gate to include adequate security (including cameras) to prevent break-ins and ensure proper site surveillance. - $18,825.15

Air Mechanics Heating and Airconditioning

HVAC System Update: Replacement of the outdated furnace to ensure proper operation, improve air circulation and maximize energy efficiency. - $14,300.00

FredFinch
Youth & Family Services

Contingency, Design and Permit Fees: 25% of the projected work scope cost has been recorded for contingency fees related to cost variables including any which may present as a result of the CASp assessment as well as the cost of architectural drawings or design fees. The cost of permitting and inspections is also included in this expenditure category. - $68,256.29
(Note: See bids for Lin-Huang Interior Design and invoice from Cal Accessibility attached to email as examples included under this category)

Project Management Fee: Cost reimbursement for Director of Campus Operations time in managing the project. - $8,820.00

General Contractor's Fee: 10% of projected work scope cost of General Contractor's management fee. - $27,302.52

Permit Service Center Consultation and Allowability:

Our project team has been working with the Berkeley Permit Service Center in submitting a complete application. We are currently waiting on our finalized architectural drawings for the project to complete all required documents for submission, however the project scope has been discussed and the process has begun in consultation with the department. Currently there are no outstanding issues foreseen with the work order that would prevent the project application from gaining approval once all documentation is finalized and submitted.

ADA Embedded into the Budget:

The total projected cost of the renovation is $377,403.95.

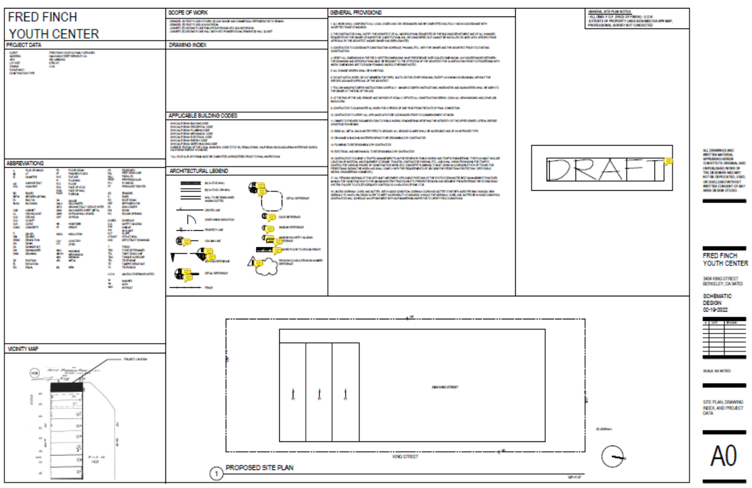
Currently the kitchen updates as well as the updates for three bathrooms, including the ground floor bathroom and two upstairs bathrooms, are to bring the building to current ADA compliance standards. The cost of these renovations is projected to total $150,700.00 or approximately 41% of the total budget, surpassing the minimum ADA requirement of 20% allocation.

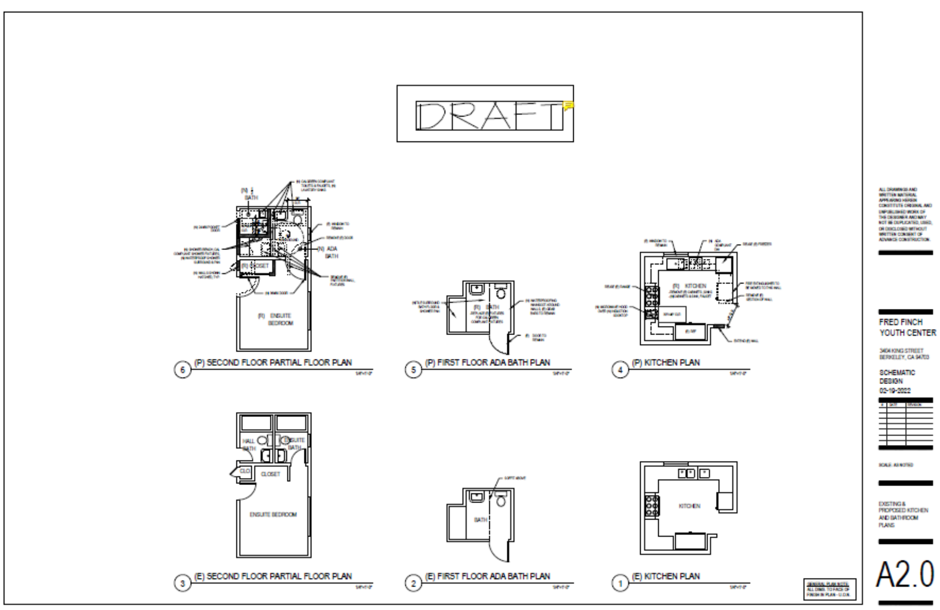
Additionally, a CASp Assessment was performed on the property on January 28, 2022. The confirmation of inspection as well as the invoice from Cal Accessibility are attached to the email submission of this memo. Once the assessment is reviewable, costs associated with making further upgrades to ensure ADA compliance will be allotted from the 25% work order contingency fee included in the final line-item budget.

FredFinch
Youth & Family Services

Drawn Plans for Submission:

FF is currently working with multiple architectural and design firms to obtain complete project drawings as requested by the Berkeley Permit Service Center. Due to high demand many firms are experiencing delays in project turnaround time, which the Permit Service Center is fully aware, as we work on our final application submission. Rough drawings have been included below as well as with the email submission of this memo.





Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: March 3, 2022

TO: Housing Advisory Commission

FROM: Alisa Shen, Principal Planner, Land Use Planning Division

SUBJECT: Citywide Affordable Housing Requirements Update

RECOMMENDATION

Conduct a public hearing on proposed amendments to comprehensively update the City's affordable housing requirements and provide a recommendation to the City Council to:

- Amend Berkeley Municipal Code (BMC) Chapter 23.328, updating the citywide Affordable Housing Requirements (AHR) in the Zoning Ordinance;
- Repeal existing administration and zoning code sections that refer to affordable housing requirements, BMC Section 22.20.065, and Section 23.312.040(A)(6);
- Rescind Resolution No. 68,074-N.S. related to fees, exemptions, and administration of inclusionary affordable housing and in-lieu programs;
- Adopt a Resolution addressing regulations for a voucher program and establishing an in-lieu fee pursuant to BMC Section 23.328.020(A)(2).

BACKGROUND

The City of Berkeley has a strong history of programs and initiatives to retain existing affordable and rent controlled tenant housing, protect tenants from displacement, and create new affordable housing including deed-restricted income-qualified housing. City Council has adopted multiple, interrelated referrals to staff and Commissions to explore revisions to the City's affordable housing requirements for new development that are currently codified in several sections of the Berkeley Municipal Code, including:

- BMC 21.28: Condominiums and Other Common Interest Subdivisions
- BMC 22.20: Mitigations and Fees—Conditions of Approval for Development Projects
- BMC 23.326: Demolition and Dwelling Unit Controls[1]

[1] Recently adopted revisions to the City's Zoning Ordinance (Title 23 of the Berkeley Municipal Code) went into effect December 1, 2021. The new Zoning Ordinance is still under Title 23 of the Berkeley

- BMC 23.328: Inclusionary Housing
- BMC 23.312: Live/Work
- BMC 13.76: Rent Stabilization and Eviction for Good Cause

There have also been changes to State laws that govern affordable housing requirements, streamlining, dwelling unit replacement, and density bonus incentives. There are also numerous locally adopted implementing resolutions that set fee amounts and exemptions. In addition, the City has administrative guidelines and practices to implement the State and local requirements.

Based on the complexity of various Council referrals, State laws and local regulations, the City engaged the consulting firm Street Level Advisors to evaluate existing regulations and potential changes in order to comprehensively update the City's affordable housing requirements.

The work to date has included:

- **October 2020:** Street Level Advisors presented a range of identified policy issues and solicited feedback from the public, the Planning Commission and a range of stakeholders including affordable housing developers and advocates, market-rate developers, and the Planning Commission, Housing Advisory Commission, Zoning Adjustments Board, and Rent Stabilization Board.
- **May 2021:** Street Level Advisors prepared a memorandum analyzing 14 categories of potential changes to the City's affordable housing requirements based on Council referrals and stakeholder and public feedback. Staff and Street Level Advisors presented the proposed changes to the Planning Commission and City Council to inform drafting of the attached ordinance and resolution.[2]

DISCUSSION

Proposed amendments to affordable housing requirements are in response to related City Council referrals, as well as in response to changed State laws that govern affordable housing requirements and density bonus incentives. Amendments will serve to consolidate affordable housing requirements into a single framework and enhance the existing requirements through the standardization and simplification of certain fees and requirements, the provision of new options by which requirements can be met, and through various administrative changes (**Attachment 1**). Proposed changes will also provide regulations for a voucher program and the establishment of a new in-lieu fee

Municipal Code but has different numbering and better organization. Under the previous or "legacy Zoning Ordinance", the section pertaining to Demolition and Dwelling Unit Controls was BMC Section 23.C.08, the section pertaining to Inclusionary Housing was 23.C.12 and the section about affordable housing requirements for Live/Work units in 23.E.20.

[2] May 5, 2021 Planning Commission Staff Report: https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-05-05_PC_Item%209(1).pdf. May 18, 2021 City Council Work Session Report: https://www.cityofberkeley.info/Clerk/City_Council/2021/05_May/Documents/2021-05-18_WS_Item_02_Updating_Citywide_Affordable_pdf.aspx

calculated on a per-square-foot basis to further support the provision of affordable housing pursuant to BMC Sec. 23.328.020(A)(2) (**Attachment 2**).

These proposed changes are briefly summarized below, along with the corresponding recommendation(s) from the memorandum prepared by Street Level Advisors, which has been updated to reflect input received since the May 2021 Planning Commission and Council Work Sessions **(Attachment 3).** Not all of the proposed changes from the Street Level Advisors memo are included in the final recommendations below, based on further staff review of the policy and practice implications. The Commission is encouraged to review all of the consultant's recommendations to inform the overall discussion.

A. Summary of Proposed Changes

1. **Consolidate Affordable Housing Requirements.** As authorized by the passage of Assembly Bill 1505, the proposed ordinance consolidates the City's existing regulations by addressing both rental and ownership projects (including live/work units and Group Living Accommodations) into an amended BMC Chapter 23.328, Affordable Housing Requirements, allowing for the deletion of the sections of the BMC where these topics were originally addressed (BMC Sections 22.20.065, and 23.312.A6). The proposed amendments impose on-site affordable housing requirements and an in-lieu fee as an alternative to on-site units (rather than a mitigation fee).[3]

2. **Establish a Per-Square-Foot In-lieu Fee.** Instead of the existing method of calculating fees based on a per-unit basis, the proposed ordinance authorizes the Council to set fees, and the proposed resolution sets the affordable housing in-lieu fee at $45 per gross residential square foot, which was shown to be roughly equivalent to the current fee for projects with typically sized units, collected at the time of Certificate of Occupancy (as opposed to the current practice of providing a discount if paid at time of Building Permit issuance). The fee would be automatically adjusted annually based on change to an established index such as the California Construction Cost Index. It is recommended to conduct a future feasibility study and consider whether to impose a higher or lower fee after a period of changing market trends (e.g., three years or more into the future).[4]

3. **Incentivize Extremely Low-Income (30% of AMI) Units.** The City's current rules require that 40% of all VLI units be offered first to Housing Choice voucher holders and 40% be offered first to Shelter+Care voucher holders. The proposed

[3] Street Level Advisors Memorandum (Jan. 2022): Recommendation 1.1, 1.2, 1.3 and 1.4. Note: Staff is in the process of determining the appropriate "effective date" of the draft ordinance and resolution and will add this to the draft documents that are prepared for Council consideration and adoption.
[4] SLA Jan. 2022 Memo, Recommendations 2.1 and 3.1.

changes would require that all of the required VLI units be offered to voucher holders (50% to Housing Choice voucher holders and 50% to Shelter+Care voucher holders) before being marketed to other income eligible households.[5] As noted in the Street Level Advisors' memo, this change along with along with the way that the City's requirements interact with the State Density Bonus will serve to slightly increase the share of ELI tenants served without adding layers of complexity to the program since voucher holders in both programs generally have incomes well below 30% AMI.

4. **Retain a Residual Fee for "Mixed Compliance" Projects.** Currently, rental projects that provide 20% of the total project units as affordable units on-site are exempt from paying fees. Half of the required units (or 10% of total units) must be for VLI residents and half (10% of total units) must be for Low Income (LI) residents. Projects that provide less than 20% of the required affordable units on-site are also required to provide at least half of those units restricted to VLI tenants and pay a fee for the residual units according to a formula that gives credit for those units that are provided on-site. The proposed ordinance continues the current requirements, and provides that projects approved pursuant to SB35 (with at least 50% of the total units restricted to LI) must meet the City's VLI standard (10% of total units) to satisfy the inclusionary requirement and thus not have any residual fee obligation.[6]

5. **Standardize Ownership and Rental Fees.** The feasibility analysis prepared by Street Level Advisors found that the City's existing requirements for ownership/condominium projects resulted in an equivalent per-square-foot fee ranging from $54 to $75, which is considerably higher than the equivalent per-square-foot fees estimated for rental projects (e.g. $45 per square foot). The analysis noted that imposing a higher fee would tend to discourage home ownership development. Setting the fee at $45 per square foot for both rental and ownership projects would "level the playing field" and still generate substantial in-lieu fees per unit because ownership units tend to be larger than rental units. It also simplifies administration as some projects may convert from rental to ownership. The proposed ordinance authorizes the City Council to set fees, and as noted above, the proposed resolution sets the affordable housing in-lieu fee at $45 per gross residential square foot for both rental and ownership projects.[7]

6. **Standardize Live-Work Requirements.** The proposed ordinance consolidates the affordable housing requirements for live/work units from BMC 23.312 into BMC 23.328 and removes the exemption for live/work projects from inclusionary and fee requirements, so that the same requirements would apply to live/work

[5] SLA Jan. 2022 Memo, Recommendation 4.1.
[6] SLA Jan. 2022 Memo: Recommendation 5.2.
[7] SLA Jan. 2022 Memo, Recommendation 6.1.

projects as any other project except for the "affirmative marketing" provision (which was carried forward from the existing requirements).[8]

7. **Add a Land Dedication Option.** The proposed ordinance adds an option for developers to dedicate land, if authorized by the City Manager, for an approved non-profit housing developer. Donated land must be equal or greater in value than the in-lieu fee that otherwise would be required.[9]

8. **Provide a Family-Sized Units Option.** The proposed ordinance allows applicants the option to provide affordable units whose total size is at least 20% of the residential square footage (rather than a unit-for-unit equivalent), if each of the affordable units is either a two-bedroom or three-bedroom unit.[10] In reviewing this proposal, staff identified some implementation concerns:

   - Leasing three-bedroom units to Section 8 and Shelter Plus Care voucher holders has historically been difficult to accomplish. This clause may ultimately undermine the ordinance's goal to serve Extremely Low-Income Households;
   - There are also concerns regarding establishing reasonable standards for unit sizes for each proposed development.

9. **Remove Exemption for Most Group Living Accommodation (GLA) Projects and Prohibit Provision of On-Site Units in GLAs.** The proposed ordinance would remove the current exemption for Group Living Accommodations (GLAs) from inclusionary and fee requirements. Fraternities, sororities and other specially designated units recognized by the University of California would retain their exemption. The proposed ordinance would also prohibit projects with an average of more than 3 bedrooms per unit from selecting the on-site option in order to reduce administrative burdens; and adopt a local density bonus that enables these projects to access the benefits of the State Density Bonus in exchange for an increased in-lieu fee instead of on-site units.[11]

10. **Reduce Fees for Small / "Missing Middle" Projects.** The proposed ordinance eliminates the exemption for projects of one to four units and replaces it with a tiered fee that steps up for projects with less than 12,000 gross residential square feet by reducing the fee by $2 per square foot for each 1,000 square foot increment less than 12,000 sf, as shown in the Table below.[12]

[8] SLA Jan. 2022 Memo: Recommendations 7.1.
[9] SLA Jan. 2022 Memo: Recommendation 8.1.
[10] SLA Jan. 2022 Memo: Recommendation 9.1.
[11] SLA Jan. 2022 Memo: Recommendations 7.2, 11.1 and 11.2.
[12] SLA Jan. 2022 Memo: Recommendations 12.1 and 12.2.

Table 1. Proposed Tiered Square-Foot Based Fee

Gross Residential Square Feet	Fee per Square Foot
12,000+	$45
11,000-11,999	$43
10,000-10,000	$41
9,000-9,999	$39
8,000-8,999	$37
7,000-7,999	$35
6,000-6,999	$33
5,000-5,999	$31
4,000-4,999	$29
3,000-3,999	$27
2,000-2,999	$25
1,000-1,999	$23
<1,000	$21

The Planning Commission can also consider a flat fee of $45 per square foot, the estimated equivalent of the City's current unit-based fee.

At this time, we do not have feasibility analyses for how this fee affects small projects (less than four units).

11. **Cap Annual Rate of Rent Increases.** The proposed ordinance stipulates that any increase in rent of an affordable unit offered for rent shall be no greater than the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous December 30 but not to exceed the corresponding increase in AMI for the same calendar year. [13] This is a change from the current ordinance which ties rent increases to the increase in Area Median Income (AMI) only. The goal is to ensure that rent increases do not result in a high housing cost burden or displacement of existing tenants. Over the past decade, annual increases in AMI are generally higher than the average increase in income of lower income households, resulting in unintended adverse impacts to tenants. This is in part due to the displacement of lower income households from the county, coupled with the increase in higher income earners moving to the county. However, while changes in CPI-U has traditionally been more stable than changes to AMI, this may change as we enter into an inflationary cycle. Staff recommends additional analysis to determine the impact of tying rent increases to CPI-U instead of AMI. Further, staff recommends that the method of annual rent increases be removed from the ordinance and incorporated into the administrative regulations.

[13] SLA Jan. 2022 Memo: Recommendation 13.

12. **Administrative Changes**. The proposed ordinance also recommends a number of administrative changes, as outlined below.[14]

    a. Require compliance plans. Developers of new projects will be required to submit an Affordable Housing Compliance Plan indicating their proposed strategy for complying with the City's affordable housing requirements. The Applicant for any Use Permit or Zoning Certificate for a Housing Development Project shall submit an Affordable Housing Compliance Plan to the Zoning Officer. The Affordable Housing Compliance Plan, as modified by the Zoning Officer or Board, may be incorporated as a condition of approval of any Use Permit or Zoning Certificate issued to the Applicant. The Affordable Housing Compliance Plan must be submitted and approved by the City as a condition of approval for any Building Permit.
    b. Authorize administrative citations. The proposed ordinance explicitly authorizes the creation of a proposed schedule of fines for monitoring and compliance violations to be included in the program guidelines.
    c. Deduct required fees/costs from gross rent. Language in the proposed ordinance was clarified to include any other mandatory fees imposed by the property-owner as a condition of tenancy in addition to tenant-paid utilities in determining whether a unit is affordable to Very Low-Income or Low-Income Households.
    d. Increase the amount of administrative set-aside from 10% to 15%. The proposed ordinance states that 15 percent of In-Lieu Fees collected may be used to pay for administration of the In-Lieu Fee or the Housing Trust Fund program, due to the increasing size and complexity of the City's portfolio of BMR units. At least 85% of In-Lieu Fees collected shall be deposited into a fund designated for use in the City's Housing Trust Fund program.

B. Topics to Be Addressed In A Separate Process

In a separate process led by the 4x4 Joint Task Force Committee on Housing, proposed changes to the City's regulation of demolitions are also under discussion. Demolition requirements help protect existing rental-controlled housing by regulating and compensating for the elimination of such units which occurs through modifications to existing housing stock (e.g., removing kitchens, combining units). This 4x4 process involves representatives from the Rent Board and City Council, and the ordinance will be reviewed by the Housing Advisory Commission, Planning Commission, and other interested parties before advancing to City Council for review and possible action.

A number of proposed changes to the City's condominium conversion regulations were presented in the memorandum prepared by Street Level Advisors. These included

[14] SLA Jan. 2022 Memo: Recommendation 14.1 - 14.4.

simplifying the calculation of the required fee, reducing the fees under certain circumstances and allowing flexibility in the use of the fees (allocating a portion of the fees to administer the condominium conversion program and/or the Housing Trust Fund and the remainder to go into the Housing Trust Fund).[15] These recommendations require additional consideration and may require additional nexus and feasibility analyses. Thus, changes to BMC Chapter 21.28, Condominiums and Other Common Interest Subdivisions, will be considered separately from the proposed changes to BMC Chapter 23.328 (and associated changes to BMC 22.20 and BMC 23.312 that are included in the proposed ordinance).

NEXT STEPS

Staff will bring recommendations from the Planning Commission and the Housing Advisory Commission regarding the draft ordinance and resolution to the City Council.[16]

Attachments:

1: Draft Ordinance Amending Berkeley Municipal Code (BMC) Chapter 23.312 Updating the Citywide Affordable Housing Requirements in the Zoning Ordinance and Repealing BMC Sections 22.20.065, and Section 23.312.040(A)(6); and

2: Draft Resolution for Regulations for Voucher Program and Establishing an In-Lieu Fee Pursuant to BMC Section 23.328.020(A)(2) and Rescinding Resolution No. 68,074-N.S.

3: Updating Affordable Housing Requirements for the City of Berkeley: Analysis and Recommendations. Prepared by Street Level Advisors, Revised February 2022.

[15] See SLA Jan. 2022 Memo, Recommendations 10.1 - 10.5.

[16] See Street Level Advisors Jan. 2022 Memo, Recommendations 10.1 - 10.5.

ORDINANCE NO. -N.S.
AFFORDABLE HOUSING REQUIREMENTS

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

Section 1. That Berkeley Municipal Code Section 21.28.080, Section 22.20.065, and Section 23.312(A)(6) are hereby repealed.

Section 2. That Berkeley Municipal Code Chapter 23.328 is amended to read as follows:

~~23.328.010 Chapter Purpose and Applicability.~~

~~A. *Purpose.* The purpose of this chapter is to:~~

~~1. Promote Housing Element goals to develop affordable housing for households with incomes below the median, as defined in this chapter, or, in the case of limited equity cooperatives, households with incomes below 120 percent of the median.~~

~~2. Require the inclusion of affordable dwelling units in specified proposed developments ("projects").~~

~~B. *Applicability.*~~

~~1. The following types of projects must comply with the inclusionary housing requirements of this chapter:~~

~~(a) Residential housing projects constructing five or more dwelling units.~~

~~(b) Residential housing projects constructing one to four new dwelling units when:~~

~~i. Such units are added to an existing one to four-unit property developed after August 14, 1986; and~~

~~ii. The resulting number of units totals five or more.~~

~~(c) Residential housing projects proposed on lots with a size and zoning designation that allows construction of five or more dwelling units.~~

~~2. This chapter does not apply to dormitories, fraternity and sorority houses, boarding houses, residential hotels, or live/work units.~~

~~3. Live/work units are subject to Low-Income inclusionary provisions in Section 23.312 (Live/Work).~~

~~4. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any conflicting requirements set forth elsewhere. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.020 General Requirements.~~

~~A. *Minimum Percent of Units.*~~

~~1. Any project subject to this chapter is required to include at least 20 percent of the total number of dwelling units within the project as inclusionary units, except that limited equity cooperatives are required to include at least 51 percent of their units as inclusionary units.~~

~~2. In applying the percentages above, any decimal fraction above a whole number of dwelling units shall be paid as an in-lieu fee as stated in Section 23.328.040 (Requirements Applicable to All Inclusionary Units).~~

~~B. *Median Income Levels.* For the purpose of determining the median income levels for households under this chapter, the City shall use the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures that are available to the City from the most recent U.S. Census. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.030 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units.~~

~~A. *Applicability.*~~

~~1. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees as set forth in this section in-lieu of providing units that are not required to be provided at below market prices pursuant to Government Code Section 65915.~~

~~2. This section applies to projects for which all required permits have already been issued, as long as no units within such a project have been sold.~~

~~B. *Deposit.* The fee shall be deposited in the City's Housing Trust Fund.~~

~~C. *Fee Amount.*~~

~~1. The in-lieu fee shall be 62.5 percent of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.~~

~~2. The fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit.~~

~~3. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5 percent.~~

~~4. This fee shall only apply to units in a project that are counted in determining the required number of inclusionary units in a project and shall not apply to any units provided as a density bonus.~~

~~5. If the City Manager determines that an actual sales price does not reflect the fair market value of a unit, the City Manager shall propose an alternate price based on the fair market value of the unit.~~

~~6. If the developer and the City Manager cannot agree on a fair market value, the City Manager shall select an appraiser to prepare an appraisal of the unit and the appraised value shall be used as the market value.~~

~~D. *Calculation of Inclusionary Sales Price.*~~

~~1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee amount shall be three times 80 percent of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit, with the exception that if the developer has already been authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale price for the purposes of this section shall be the price permitted under that ordinance.~~

~~2. Area median income (AMI) shall be calculated in accordance with the affordability regulations established by the City Manager pursuant to Section 23.328.080 (Administrative Regulations).~~

~~E. *Time of Payment of Fee.* The developer shall pay the in-lieu fee no later than the closing date of the sale of a unit as a condition of the closing. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.040 Requirements Applicable to All Inclusionary Units.~~

~~A. *Recipient Requirement.*~~

~~1. All inclusionary units other than those in limited equity cooperatives shall be sold or rented to:~~

~~(a) The City or its designee; or~~

~~(b) Low-Income, Lower-Income, or very low-income households.~~

~~2. Units in limited equity cooperatives shall be sold or rented to households whose gross incomes do not exceed 120 percent of the Oakland PMSA median.~~

~~B. *Agreement.* The applicant shall execute a written agreement with the City indicating the number, type, location, approximate size, and construction schedule of all dwelling units and other information as required to determine compliance with this chapter.~~

~~C. *Timing.* All inclusionary units in a project and phases of a project shall be constructed concurrently with, or before, the construction of non-inclusionary units.~~

~~D. *Criteria.* All inclusionary units shall be:~~

~~1. Reasonably dispersed throughout the project;~~

~~2. Of the same size and contain, on average, the same number of bedrooms as the non-inclusionary units in the project; and~~

~~3. Comparable with the design or use of non-inclusionary units in terms of appearance, materials, and finish quality.~~

~~E. *In-Lieu Fee Requirement.* In projects where calculating the inclusionary requirement results in a fraction of a unit, the fraction shall be paid in the form of an in-lieu fee to the City.~~

~~1. Where Government Code Section 65915 does not apply, the in-lieu fee shall be the fractional value of the difference between development cost (excluding marketing costs and profit) and actual sales price for the average comparable unit in projects.~~

~~2. Where Government Code Section 65915 does apply, the in-lieu fee shall be the difference between affordable cost for an appropriately-sized household and the fractional value of the average comparable actual sales price for the fraction of the unit in projects to require a density bonus or equivalent incentive.~~

~~F. *Use of In-Lieu Fees.*~~

~~1. The in-lieu fee shall be used by the City or its designee (such as a non-profit housing development corporation) to provide, construct, or promote the creation or retention of low-income housing in Berkeley.~~

~~2. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for review and approval.~~

~~G. *Exceptions.* Where the applicant shows, and the City agrees, that the direct construction and financing costs of the inclusionary units, excluding marketing cost and profit (and also excluding land costs if a density bonus or equivalent incentive is provided), exceeds the sales prices allowed for inclusionary units by this chapter, the Zoning Adjustments Board (ZAB) may approve one or more of the following measures to reduce costs or increase profitability:~~

~~1. Reduce the floor area or the interior amenities of the inclusionary units, provided that such units conform to applicable building and housing codes.~~

~~2. Increase the number of bedrooms in the inclusionary units.~~

~~3. In a home ownership project, construct rental units in a number required to meet the inclusionary provisions of this chapter applicable to rental housing projects.~~

~~4. Waive the in-lieu fees for fractions of units. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.050 Inclusionary Unit Requirements for Rental Housing Projects.~~

~~A. *General Rental Requirements.*~~

~~1. All inclusionary units shall be occupied by low, lower, or very low-income households.~~

~~2. The maximum rental price for inclusionary units shall be affordable to an appropriate-sized household whose income is 81 percent of the Oakland PMSA median.~~

~~3. In projects requiring more than one inclusionary unit, at least 50 percent of those units shall be rented at a price that is affordable to low or lower-income households, provided that the City can make available rental subsidies through the federal Section 8 Existing Housing Program or an equivalent program.~~

~~4. When there is an uneven number of inclusionary units, the majority of units shall be priced to be affordable to a household at 50 percent of median income if subsidies are available.~~

~~5. If no rental subsidies are available, all inclusionary unit prices shall be affordable to households at 81 percent income of the Oakland PMSA median.~~

~~6. If an applicant agrees to provide 10 percent Lower-Income inclusionary units, the rental price for such units shall be affordable to a household with income that is 60 percent of the Oakland PMSA median.~~

~~7. Dwelling units designated as inclusionary units shall remain in conformance with the regulations of this section for the life of the building.~~

~~8. The City or its designee shall screen applicants for the inclusionary units and refer eligible households of the appropriate household size for the unit.~~

~~9. For purposes of occupancy, the appropriate household size standards used by the housing authority for the federal Section 8 Existing Housing Program or any future equivalent program shall be used.~~

~~10. The applicant or owner shall retain final discretion in the selection of the eligible households referred by the City.~~

~~11. The owner shall provide the City with data on vacancies and other information required to ensure the long-term affordability of the inclusionary units by eligible households.~~

~~B. *Affordability Defined.* A unit shall be considered affordable if the rent (including utilities) does not exceed 30 percent of a household’s gross income.~~

~~1. Gross household income and utility allowance shall be calculated according to the guidelines used by the Berkeley Housing Authority for the federal Section 8 Existing Housing Program.~~

~~2. For purposes of calculating rent, appropriate household size shall be determined by using the schedule contained in the administrative regulations developed for this chapter. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.060 Inclusionary Unit Requirements for Ownership Projects.~~

~~A. *General Sale Requirements.* Inclusionary units in ownership projects shall be sold as set forth below:~~

~~1. Inclusionary units in ownership projects shall be sold at a price that is affordable to an appropriate-sized household whose income is no more than 80 percent of the area median income reported for the Oakland PMSA for households of that size, unless the cost of development of the unit is greater than the affordable sales price.~~

~~2. Appropriate sizes of household and the ratio of income to sales price for affordable units shall be defined by City Manager regulation.~~

~~3. Inclusionary ownership units shall be affirmatively marketed to tenants with Section 8 housing vouchers, and who are known to be interested in participating in the Section 8 homeownership program, or other equivalent program(s) of the City, which are in effect at the time the units are offered for sale by the developer.~~

~~B. *Right of First Refusal and Purchaser Preference.*~~

~~1. The applicant for a project other than a limited equity housing cooperative is required to give right of first refusal to purchase any or all new inclusionary units to the City or a City designee for a period of not less than 60 days as evidenced by issuance of a certificate of occupancy.~~

~~2. Should the City choose not to exercise its right of first refusal, it shall provide the applicant or owner with a purchaser or with a list of eligible purchasers within a period of not less than 60 days.~~

~~(a) If the list is not provided, the applicant may select a low-income purchaser of the applicant's choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this chapter.~~

~~(b) The City shall maintain a list of eligible low-income households and review the assets and incomes of prospective purchasers of the inclusionary units on a project-by-project basis and refer potential purchasers to the applicant or owner.~~

~~3. All purchasers of inclusionary units shall be first-time home buyers from low, lower, or very low-income households.~~

~~4. Purchasers are also required to occupy the unit except that such requirement may be waived with the approval of the City. In such cases, the unit shall be rented to a low, lower, or very low-income household at a rent affordable by such households.~~

~~5. Preference of inclusionary units are as follows:~~

~~(a) First preference will be given to eligible Berkeley residents.~~

~~(b) Second preference will be given to eligible persons employed in Berkeley.~~

~~(c) Other preferences may also be established administratively, with Planning Commission review, to help meet the City's Housing Element goals.~~

~~6. The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of inclusionary units and shall provide purchasers with a Declaration of Restrictions applicable to ownership of inclusionary units.~~

~~7. Purchasers of inclusionary units in limited equity cooperatives at time of first occupancy shall be first time home buyers with gross incomes no greater than 120 percent of the Oakland PMSA median.~~

~~8. Subsequent purchasers of inclusionary units in limited equity cooperatives shall be first time home buyers whose yearly gross income is no more than 44 percent of the cost of a unit at the time of sale, provided that such income is no more than 110 percent of the Oakland PMSA median.~~

~~C. *Resale Restrictions.* All inclusionary units developed under this chapter except for those in limited equity cooperatives are subject to the resale restrictions set forth below.~~

~~1. Home ownership inclusionary units offered for sale or sold under the requirements of this chapter shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or subsequent purchasers from the date of the owner's notification to the City of intent to sell.~~

~~2. The resale price of the unit shall not exceed the original price and customary closing costs, except to allow for:~~

~~(a) The lower of any increase of either the Consumer Price Index (CPI) for all urban consumers (as produced by the U.S. Bureau of Labor Statistics or its successor agencies) applicable to the Oakland PMSA; or~~

~~(b) The increase as measured in household income guidelines published annually by the U.S. Department of Housing and Urban Development (or its successor agencies) for the Oakland PMSA.~~

~~3. The resale formula shall supersede and replace the earlier resale formula in deed restrictions executed between February 19, 1987 (adoption date for Ordinance 5791-N.S.) and May 23, 2006.~~

~~(a) The City, or its designee, shall notify each such owner of this change to the resale formula contained in their deed restriction within 60 days of adoption of this section.~~

~~(b) All other terms and conditions of these deed restrictions shall remain in effect.~~

~~4. If the City does not act on its right of first refusal, the same procedure for new inclusionary units shall be used for selection of a purchaser.~~

~~5. The seller shall not levy or charge any additional fees nor shall any finders fee or other monetary consideration be allowed, other than customary real estate commissions if the services of a licensed real estate agent are employed.~~

~~6. The City or its designee may monitor resale of inclusionary units in limited equity cooperatives.~~

~~7. The City or its designee shall monitor the resale of ownership of inclusionary units.~~

~~8. The owners of any inclusionary units shall attach, lawfully reference in the grant deed conveying title of any such inclusionary ownership unit, and record with the County Recorder a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this chapter. Violators of any of the terms may be prosecuted by the City. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.070 Special Requirements for Avenues Plan Area.~~

~~A. *City Council Findings.* The City Council finds and determines that:~~

~~1. The Avenues Plan process identified several regional and Berkeley-specific barriers to housing development.~~

~~2. Among the Berkeley-specific barriers were:~~

~~(a) High land prices;~~

~~(b) Lengthy, difficult, and uncertain permit processes; and~~

~~(c) Insufficient financing, especially for affordable housing projects.~~

~~3. The Avenues Plan area represents a core area of Berkeley where it is particularly appropriate to encourage housing development because of the area's generally good access to workplaces, transit service, senior services, and retail stores.~~

~~4. The policy to encourage housing in this area is reflected in several documents, including, but not limited to, the City's Housing Element of the General Plan, the Concept Plan for the General Plan revision, the Downtown Plan, the South Berkeley Area Plan, the West Berkeley Plan, and the University Avenue statement of planning of goals.~~

~~5. Despite the City's support for housing in this area, new housing development here has been limited and this has hindered revitalization of the area.~~

~~6. As part of a multi-pronged experimental strategy to create incentives to encourage housing development, relaxation of various inclusionary zoning requirements within the Avenues Plan area as set forth in this section is appropriate.~~

~~7. These changes will also assist the buyer of below market rate inclusionary units, by allowing buyers to gain greater appreciation on their investments (market conditions permitting), making the investment more similar to conventional home ownership, while retaining the long term affordability of inclusionary units.~~

~~8. The changes will also encourage the construction of larger family-sized units, rather than the smaller units which have generally been built in multi-family developments.~~

~~9. These changes in inclusionary zoning will be followed by mechanisms to make more financing available and changes in zoning standards and permit processes.~~

~~10. The success of these changes will be reviewed annually until the five-year time period of the Avenues Plan experiment expires July 1, 2000.~~

~~B. *Applicability.*~~

~~1. This section shall remain in effect until July 1, 2000, at which time the Planning Commission, in consultation with other relevant commissions, shall re-examine its effectiveness. At that time the Commission may initiate modifications to, or an extension of, this section.~~

~~2. This section applies on the streets and the addresses listed in Table 23.328-1. The area of applicability consists of the entire C-DMU District and portions of the C-C, C-U, C-SA, C-W, C-N, R-2A, R-3, and R-4 districts as indicated in the table. Within this area, this section supersedes any inconsistent provisions in this chapter.~~

~~Table 23.328-1. AVENUE AREAS PLAN AREA: STREET AND ADDRESS RANGE~~

~~**Street**~~	~~**Address**~~
~~Acton~~	~~1940—2100~~
~~Addison~~	~~841--1145 odd, 1846 up~~
~~Adeline~~	~~All~~
~~Alcatraz Avenue~~	~~1700—1937~~
~~Allston Way~~	~~1901--1999 odd, 2000 up~~
~~Ashby Avenue~~	~~1830--2117, 2118--2198 even~~
~~Bancroft Way~~	~~2000—2300~~
~~Berkeley Square~~	~~All~~
~~Berkeley Way~~	~~1200--1800 even only, 1800--1920, 1920--2000 even only, 2000 up~~
~~Blake~~	~~1800—2100~~
~~Bonar~~	~~2000—2099~~
~~Bonita~~	~~1900--1950 even, 1950—1999~~
~~Browning~~	~~portion of West Campus only~~
~~California~~	~~1950—2009~~
~~Carleton~~	~~2000—2117~~
~~Center~~	~~All~~
~~Channing Way~~	~~1800--1850 even, 2000--2200, 2200--2300 odd~~
~~Cowper~~	~~All~~
~~Chestnut~~	~~1910--1950 even, 1950 up~~
~~Curtis~~	~~1900--2100, portion BUSD~~
~~Delaware~~	~~1041--1112, 2000--2200 even~~
~~Derby~~	~~2000—2113~~
~~Dover~~	~~All~~

~~Durant Avenue~~	~~2000—2300~~
~~Dwight Way~~	~~1800--1850 even, 1850—2200~~
~~Ellis~~	~~3124--3320 odd~~
~~Emerson~~	~~2000—2111~~
~~Essex~~	~~1901—2106~~
~~Fairview~~	~~1750 up~~
~~Fulton~~	~~2200--2400, 2400--2606 even~~
~~Grant~~	~~1800--1900 odd, 1900--2050, 2501--2599 odd~~
~~Harold Way~~	~~All~~
~~Harmon~~	~~1750 up~~
~~Harper~~	~~2901--3123 odd~~
~~Haste~~	~~1900--1998 even, 2000—2200~~
~~Hearst~~	~~1032--1200, 1800--2000 even, 2000—2200~~
~~Henry~~	~~1900 up~~
~~Jefferson Avenue~~	~~2000—2050~~
~~King~~	~~3221 up, odd~~
~~Kittredge~~	~~All~~
~~Martin Luther King Jr. Way~~	~~1900--2050, 2051--2199 odd, 2400--2450 even, 2450--2600, 2900 up~~
~~McGee Avenue~~	~~1900—2050~~
~~McKinley Avenue~~	~~2400--2500 odd~~
~~Milvia~~	~~1800--1950 odd, 1950--2199, 2200--2450 odd, 2450--2550, 2550--2900 odd only~~
~~Newbury~~	~~All~~
~~Oregon~~	~~2000—2122~~
~~Otis~~	~~All~~
~~Oxford~~	~~1800—2200~~
~~Parker~~	~~1800--1998 even, 2000—2200~~
~~Prince~~	~~1830—2105~~
~~Russell~~	~~1820--2000 even, 2000—2117~~

~~Sacramento~~	~~1900--2000, 2050--2100 even~~
~~San Pablo Avenue~~	~~1800—2199~~
~~Shattuck Avenue~~	~~1800 up~~
~~Shattuck Square~~	~~All~~
~~Stuart~~	~~2100—2107~~
~~Tremont~~	~~All~~
~~University Avenue~~	~~840 up~~
~~Walnut~~	~~1800 up~~
~~West~~	~~1950—1999~~
~~Whitney~~	~~All~~
~~Woolsey~~	~~1750—2110~~
~~6th~~	~~1916—2099~~
~~7th~~	~~1912—2099~~
~~8th~~	~~1910—2099~~
~~9th~~	~~1910—2099~~
~~10th~~	~~1908—2099~~
~~62nd~~	~~1700 up~~
~~63rd~~	~~1700 up~~

~~C. *Definitions.* For purposes of this section, the following definitions apply:~~

~~1. "Project" means the total number of housing units planned to be built on a single lot or on a grouping of contiguous, commonly owned, or controlled lots, regardless of whether those units are all built simultaneously.~~

~~2. "Affordable family-sized unit" means a unit which:~~

~~(a) Is at least 850 square feet in area if two bedrooms or 1,100 square feet if three bedrooms or more;~~

~~(b) Contains at least two lawful bedrooms;~~

~~(c) Contains at least as many bathrooms as the corresponding two-bedroom market rate units; and~~

~~(d) Is sold at a price that is affordable to an appropriate sized household whose income is no more than 80 percent of the metropolitan area median as reported by the Department of Housing and Urban Development (HUD).~~

~~D. *Number of Inclusionary Units Required.*~~

~~1. The number of inclusionary units required are shown in the Table 23.328-2.~~

~~Table 23.328-2. NUMBER OF INCLUSIONARY UNITS REQUIRED~~

~~**Total Number of Units Built**~~	~~**Number of Required Inclusionary Units**~~
~~10—14~~	~~1~~
~~15—19~~	~~2~~
~~Each additional multiple of 5 units~~	~~1 additional~~

~~2. For every five units which the applicant can show with bona fide sales documents have been sold at a price at or below that affordable to an appropriately sized household with an income of 100 percent of metropolitan area median, the applicant is released of the obligation to provide one inclusionary unit.~~

~~3. For every 10 affordable family-sized units, the applicant is released of the obligation to provide one inclusionary unit sold at a price at or below that affordable to an appropriately sized household with an income of 100 percent of metropolitan area median.~~

~~4. Within the area of applicability for that portion of a project wherein both the inclusionary and the non-inclusionary units contain at least as many bathrooms as the corresponding two-bedroom market rate units, only 10 percent of units must be inclusionary.~~

~~E. *Pricing Requirements.*~~

~~1. The first inclusionary unit in projects with units for sale shall be sold at a price that is affordable to an appropriately sized household whose income is no more than 80 percent of the Oakland PMSA median as reported by HUD.~~

~~2. Except as otherwise provided in Section 23.328.070.C.2.d above, the second inclusionary unit shall be sold at a price that is affordable to an appropriate sized household whose income is no more than 100 percent of the PMSA median and subsequent inclusionary units shall be sold alternately at these price levels.~~

~~3. Inclusionary sale units in projects in the Avenues Plan Area shall be sold at a price such that first year housing cost (including homeowners' association dues, if any) for a household of appropriate size with an income at the targeted level shall not exceed 33 percent of income.~~

~~4. This cost shall be calculated assuming that the buyer makes a 10 percent down payment, which shall not be considered a portion of the cost.~~

~~5. The housing cost shall be calculated for each project at the time the condominium association budget is approved by the California Department of Real Estate and shall not be changed after that time for that project, regardless of future changes in cost.~~

~~6. The resale price of inclusionary units within the Avenues Plan Area may increase at the rate of increase of the Consumer Price Index for all urban consumers (CPI-U) applicable to the metropolitan area. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.080 Administrative Regulations.~~

~~The City Manager or the City Manager's designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross rents and sale prices, requiring guarantees, entering into recorded agreements with applicants and taking other appropriate steps necessary to ensure that the required Low-Income and very Low-Income dwelling units are provided and occupied by Low-Income households. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.090 Fees.~~

~~The City Council, by resolution, may establish fees for the administration of this chapter. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

23.328.010 Findings.

A. 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 "fair share" allocated to Berkeley increased significantly based on the regional housing needs determination finalized in late 2021. The sixth cycle of the RHNA for the San Francisco Bay Area allocates to Berkeley a "fair share" that calls for adequate sites for 8,934 housing units for the period from 2023 to 2031, including sites for 2,446 Very Low-Income units, 1,408 Lower-

Income units, and 1,416 Moderate Income units. Under the state Housing Element Law, the City must update its Housing Element to provide adequate sites for its updated “fair share” allocation by 2023.

B. The Bay Area suffers from a shortage of affordable housing. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise, which leads to displacement of low-income residents and exacerbates the shelter crisis that has led to unacceptably high rates of homelessness in the City of Berkeley and the Bay Area region.

C. In 1990, the City established the Housing Trust Fund program to pool available funding for affordable housing development. The Housing Trust Fund program is funded by federal, state, and local revenues, including by in-lieu fees paid by developers of market-rate housing projects under the City’s existing affordable housing ordinances.

D. The City Council hereby finds that there is a legitimate public interest in the provision of affordable housing to address the crises of displacement, homelessness, and lack of housing affordability in the City, and that there is a significant and increasing need for affordable housing in the City to meet the City‘s regional share of housing needs under the California Housing Element Law.

E. The City Council further finds that the public interest would best be served if new affordable housing were integrated into new market-rate residential developments to facilitate economically diverse housing, while providing alternative options to the on-site construction of affordable housing to replenish the City’s Housing Trust Fund program or allow for the construction of affordable housing on land dedicated by market-rate housing developers.

23.328.020 Definitions.

A. “Affordable Unit” means a Residential Unit that is in perpetuity affordable to Very Low-Income Households or Lower-Income Households, as defined in California Health and Safety Code sections 50052.5 and 50053.

B. “Affordable Housing Compliance Plan” means an enforceable commitment by an Applicant to comply with the requirements of this Chapter that identifies the number and type of Affordable Units, the amount of In-Lieu Fees, and/or the parcels of land (or portions thereof) that will be provided and/or paid by the Applicant to comply with those requirements.

C. “AMI” means the area median income applicable to the City of Berkeley, as defined by the U.S. Department of Housing and Urban Development, or its successor provision, or as established by the City of Berkeley in the event that such median income figures are no longer published by the U.S. Department of Housing and Urban Development.

D. "Applicant" means any individual, person, firm, partnership, association, joint venture, corporation, entity, combination of entities or authorized representative thereof, who undertakes, proposes and/or applies to the City for, any residential development.

E. "Housing Development Project" means a development project, including a mixed-use project, involving the construction or title conversion of one or more Residential Units.

F. “Housing Trust Fund” means the program to finance low- and moderate-income housing established by Resolution No. 55,504-N.S., or any successor fund established for the same purpose.

G. "Lower-Income Household" shall mean a household whose income does not exceed the low-income limits applicable to Alameda County, as defined in California Health and Safety Code section 50079.5 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development.

H. “Residential Unit” means, for purposes of this Chapter, any Dwelling Unit, any Live-Work Unit, or any bedroom of a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op; provided, however, that for purposes of this Chapter, “Residential Unit” shall not include any Accessory Dwelling

Unit or Junior Accessory Dwelling Unit that is accessory to a Single Family Dwelling. Residential Units shall not include any density bonus units that an Applicant is entitled to construct under Government Code section 65915.

I. "Very Low-Income Household" shall mean a household whose income is no more than 50% of AMI, as defined in California Health and Safety Code section 50105.

23.328.030 Affordable Housing Requirements.

A. Requirement to Construct Affordable Units

1. Except as otherwise provided in this Chapter, no permit for the construction of any Housing Development Project shall be issued unless at least 20% of the Residential Units are Affordable Units.

2. In lieu of providing Affordable Units pursuant to Paragraph 1, an Applicant may comply with this Chapter by providing Affordable Units that comprise at least 20% of the residential square footage of the Housing Development Project, provided that each of the affordable units is either a two-bedroom or three-bedroom unit.

3. Affordable Units shall be (a) reasonably dispersed throughout the Housing Development Project; (b) on average, the same size as and contain the same number of bedrooms as other Residential Units in Housing Development Project (provided, however, that no affordable unit may have more than three bedrooms); and (c) comparable to other Residential Units in the Housing Development Project in terms of appearance, materials, and finish quality. Residents of Affordable Units shall have access to the same common areas and amenities that are available to residents of other Residential Units in the Housing Development Project.

4. At least 50% of the required Affordable Units in the Housing Development Project shall be offered for rent at a rent that is affordable to Very Low-Income Households, up to a maximum requirement of 10% of the total units in the

Housing Development Project if the project provides more Affordable Units than are otherwise required by this Chapter.

5. In determining whether a unit is affordable to Very Low-Income or Low-Income Households, maximum allowable rent for any affordable unit shall be reduced by an amount equal to the value of the City-published utility allowance provided for Tenant-paid utilities and any other mandatory fee imposed by the property owner as a condition of tenancy.

6. Any increase in rent of an occupied Affordable Unit shall be no greater than the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous December 30 but not to exceed the corresponding increase in AMI for the same calendar year.

7. All Affordable Units shall be subject to a recorded affordability restriction requiring in perpetuity that each Affordable Unit be sold at an affordable sales price or offered for rent at an affordable rent, as defined this Chapter.

8. The City Manager or their designee shall adopt rules and regulations (a) establishing the affordable sales price or affordable rent for each Affordable Unit, consistent with the requirements of Health and Safety Code sections 50052.5 and 50053; and (b) ensuring that Affordable Units are sold or rented to Very Low-Income and Lower-Income Households, consistent with the requirements of this Chapter.

9. Affordable Units designated for Very Low-Income Households shall be offered for rent to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f), the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*), or any similar state or federally funded rent subsidy program prior to being offered to other potential tenants.

10. Inclusionary Live-Work Units shall be affirmatively marketed by the developer of a project to income-eligible persons performing a work activity permitted in the district where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units.

11. The owner of any Affordable Unit offered for rent must report to the City annually the occupancy and rents charged for each Affordable Unit, and any other information required pursuant to rules and regulations adopted by the City Manager or their designee.

12. An Affordable Unit that is constructed to qualify for a density bonus under Government Code section 65915 that otherwise meets the requirements of this Chapter shall qualify as an Affordable Unit under this Chapter.

B. Option to Pay In-Lieu Fee

1. In lieu of providing some or all of the Affordable Units required under this Chapter (including any fractional units), an Applicant may elect to pay a fee, the amount of which the City Council may establish by resolution ("In-Lieu Fee"). The City Council may by resolution differentiate among types, classes, and locations of Housing Development Projects to the maximum extent permitted by law; may establish separate fees and criteria for the provision of units that are affordable to Very Low-Income Households and units that are affordable to Low-Income Households; and may establish the method for calculation of the In-Lieu Fee.

2. Up to 15 percent of In-Lieu Fees collected may be used to pay for administration of the In-Lieu Fee or the Housing Trust Fund program. At least 85% of In-Lieu Fees collected shall be deposited into a fund designated for use in the City's Housing Trust Fund program.

3. All In-Lieu Fees shall be paid prior to the issuance of a Certificate of Occupancy, or if no Certificate of Occupancy is required, prior to the occupancy of the Housing Development for any purpose.

C. Land Dedication Option

1. The requirements of this Chapter may be satisfied by the dedication of land in lieu of constructing Affordable Units within the Housing Development Project if the City Manager or their designee determines that all of the following criteria have been met:

a. Marketable title to the site is transferred to the City, or an affordable housing developer approved by the City, prior to the commencement of construction of the Residential Development pursuant to an agreement between the Applicant and the City.

b. The site has a General Plan designation that authorizes residential uses and is zoned for residential development at a density to accommodate at least the number of Affordable Units that would otherwise be required under Paragraph A.

c. The site is suitable for development of the Affordable Units, taking into consideration its configuration, physical characteristics, location, access, adjacent uses, and applicable development standards and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site.

d. Infrastructure to serve the dedicated site, including, but not limited to, streets and public utilities, are available at the property line and have adequate capacity to serve the maximum allowable residential density permitted under zoning regulations.

e. The site has been evaluated for the presence of hazardous materials and for the presence of geological hazards and all such hazards are or will be mitigated to the satisfaction of the City prior to acceptance of the site by the City.

f. The value of the site upon the date of dedication is equal to or greater than the in-lieu fee that would otherwise be required under Paragraph A.

2. The City shall solicit proposals from affordable housing developers to construct restricted income units on the site dedicated to the City, but if the City is unable to obtain a qualified affordable housing developer to construct a viable affordable housing development on the property within two years of its solicitation or to commence construction within five years, the City may sell, transfer, lease, or otherwise dispose of the dedicated site for any purpose. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the City shall be deposited shall be deposited into a fund designated for use in the City's Housing Trust Fund program.

D. Optional Density Bonus for Small Projects. A Housing Development Project having 20 or fewer Residential Units (including any density bonus units authorized under this Paragraph) shall be entitled to a density bonus of 35 percent, provided that the Applicant complies with the requirements of this Section solely by paying an In-Lieu fee, the amount of which shall be established by resolution of the City Council. An applicant that elects to use the optional density bonus for small projects shall not be permitted to combine the bonus available under this paragraph with a State Density Bonus pursuant to Gov. Code section 65915 et seq. For purposes of this Paragraph, a "density bonus" means a density increase over the otherwise maximum allowable gross residential density under the zoning ordinance as of the date an application is complete or, if applicable, a preliminary application is submitted.

23.328.040 Waiver or Modification of Affordable Housing Requirements.

A. The City Manager or their designee may waive or modify the requirements of this Chapter at their sole discretion where any of the following conditions are established:

1. A project providing low- or moderate-income housing is funded in whole or in part by the City's Housing Trust Fund program;

2. The implementation of the requirements of this Chapter would violate the rights of any person under the California or United States Constitutions, any federal law, or any state law governing a matter of statewide concern and applicable to a charter city; or

3. The benefits of the project to the City outweigh the detriment of foregoing the provision of Affordable Housing or the contribution of In-Lieu fees to the Housing Trust Fund program. In weighing the benefits and detriment to the City, the following factors may be considered:

a. The impact of the requirements of this Chapter on the feasibility of a Housing Development Project;

b. Other economically beneficial uses of the Applicant's property;

c. The burdens the Housing Development Project places on the City in terms of increased demand for affordable housing, child care, public facilities or amenities, or other impacts which reasonably may be anticipated to be generated by or attributable to the Housing Development Project; and

d. The impact on the Housing Trust Fund program of foregoing the payment of any In-Lieu fee that would otherwise be made.

B. The Applicant shall bear the burden of proof to establish eligibility for a waiver or modification of the requirements of this Chapter.

23.328.050 Implementation.

A. The Applicant for any Use Permit or Zoning Certificate for a Housing Development Project shall submit an Affordable Housing Compliance Plan to the Zoning Officer. The Affordable Housing Compliance Plan, as modified by the Zoning Officer or Board, may be incorporated as a condition of approval of any Use Permit or Zoning Certificate issued to the Applicant. The Affordable Housing Compliance Plan must be submitted and approved by the City as a condition of approval for any Building Permit.

B. The City Manager or their designee may promulgate additional rules and regulations consistent with the requirements of this Chapter.

C. The City Council may by resolution establish fees for the implementation and administration of this Chapter and may establish administrative penalties for violations of this Chapter.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 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. ________

ADOPTING REGULATIONS FOR VOUCHER PROGRAM AND ESTABLISHING AN IN-LIEU FEE TO SUPPORT THE PROVISION OF AFFORDABLE HOUSING PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 23C.12.030.B and RESCINDING RESOLUTION 65,074-N.S.

WHEREAS, Berkeley Municipal Code ("BMC") Section 23.328 establishes a requirement that 20% of Residential Units (as defined) in market-rate developments be offered for rent or sale at affordable rents or prices, as defined ("Affordable Units");

WHEREAS, BMC Section 23.328 authorizes the City Council to establish by resolution preferences for renting Affordable Units offered for rent to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f), the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*), or similar state or federally funded rent subsidy program;

WHEREAS, BMC Section 23.328 authorizes developers of market-rate housing to pay a fee in lieu of complying with the requirement to provide on-site affordable housing ("In-Lieu Fee");

WHEREAS, BMC Section 23.328 authorizes the City Council to establish the In-Lieu Fee by resolution, and further authorizes the Council to differentiate among types, classes, and locations of Housing Development Projects to the maximum extent permitted by law; to establish separate fees and criteria for the provision of units that are affordable to Very Low Income Households and units that are affordable to Low Income Households; and to establish the method for calculation the In-Lieu Fee;

WHEREAS, the City retained Street Level Advisors to provide analysis and recommendations for updating the City's affordable housing requirements, the scope of which included a financial feasibility study of the City's affordable housing mitigation fees;

WHEREAS, Street Level Advisors prepared a Financial Feasibility Analysis dated April 27, 2021, which determined that an affordable housing fee of $45 per residential square foot would be financially feasible;

WHEREAS, Street Level Advisors recommended certain modifications to the $45 per residential square foot affordable housing fee that would not adversely impact the financial feasibility of housing development projects, including (1) differentiating between fees for units that are affordable to Very Low-Income Households and Low-Income Households ("Very Low-Income Units" and "Low-Income Units," respectively); and (2) charging a lower / tiered fee for smaller projects.

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

1. The In-Lieu Fee authorized and provided for by BMC Section 23.328 shall be $45 per Residential Square Foot (defined as the gross square footage within all of the dwelling units, less any credit for on-site Affordable Housing Units), and shall be automatically increased annually based on changes the California Construction Cost Index unless otherwise provided for by BMC Section 23.328 or by this Resolution.

2. For Housing Development Projects having a Residential Square Footage of less than 12,000 square feet, the In-Lieu Fee shall be calculated as follows:

Gross Residential Square Feet	Fee per Square Foot
12,000+	$45
11,000-11,999	$43
10,000-10,000	$41
9,000-9,999	$39
8,000-8,999	$37
7,000-7,999	$35
6,000-6,999	$33
5,000-5,999	$31
4,000-4,999	$29
3,000-3,999	$27
2,000-2,999	$25
1,000-1,999	$23
<1,000	$21

3. All Very Low-Income Units must be offered to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*) before being marketed to other income-eligible households. The allocations shall be divided equally between the Section 8 Program (50%) and the Shelter Plus Care Program (50%). The majority of the Very Low-Income units shall be designated for the Shelter Plus Care Program when there is an uneven number of units.

4. Exemptions. The In-Lieu Fee shall be waived for the following Housing Development Projects:

   a. Residential Units offered at no cost to support nonprofit public benefit activities.

   b. A Residential Unit that replaces a unit that has been destroyed by fire, earthquake or other disaster, if the applicant files a complete permit application within two years after destruction of any such Residential Unit; provided, however, the In-Lieu Fee shall be assessed on any net increase in gross Residential Square Footage.

   c. A Residential Unit that is expanded, renovated, or rehabilitated unless the unit was vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation, in which case the fee will apply to the net new Residential Square Footage.

5. Notwithstanding anything to the contrary, the City Manager or their designee may waive all or part of the In-Lieu Fee adopted by this Resolution pursuant to BMC Section 23.328.

BE IT FURTHER RESOLVED that Resolution 65,074-N.S. is hereby rescinded.

Street Level Advisors

Updating Affordable Housing Requirements for The City of Berkeley, CA

Analysis and Recommendations

Revised February 2022[1]

[1] Previous version: 4/27/21. See 5/5/21 PC Meeting - Item 9 – Attachment 1: https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-05-05_PC_Item%209(1).pdf

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Summary of Proposed Changes

	CURRENT	PROPOSED OPTION(S)
Ordinance	***Rental***: Affordable Housing Mitigation Fee (BMC 22.20.065) ***Ownership***: Inclusionary Housing Requirements (BMC 23C.12)	Affordable Housing Requirements Ordinance (one ordinance that addresses requirements for rental, ownership and live/work units)
On-site Unit Income Targets	***Rental***: 10% of total units @ 50% of AMI, 10% of total units at 80% of AMI ***Ownership***:20% of total units @ 80% of AMI	No change
Base Fee	***Rental***: $39,746 per market rate unit ***Ownership***: 62.5% of the difference between market and affordable price for inclusionary unit.	$45 per gross residential square foot
VLI Incentive	40% of VLI units marketed to Housing Choice Voucher holders, 40% to Shelter+Care holders.	All VLI Units must be offered to voucher holders first (50% to Housing Choice and 50% to Shelter + Care).
Mixed Compliance Incentive	Projects that provide less than 20% on-site receive the same reduction in fee whether units are VLI or LI	More expensive/higher need VLI units reduce remainder fee by more than LI units.
Live Work and GLA	Live Work Ordinance (BMC 23E.20) exempts projects from IH and AHMF, requires 20% of live work units be affordable at 80% of AMI. Units with Group Living Accommodations (GLA) occupancy are also exempt.	Remove special exemption for Live Work and GLA units. Affirmative marketing of Live Work units to artists/others who need larger units still required.
Land Dedication	None	Create new Land Dedication Option
Family Size Unit Incentive	None	Projects that provide 2 and 3-bedroom BMR units may choose to provide 20% of total Residential Square Feet instead of 20% of units.
Condo Conversion	Nexus Fee calculation or 8% of market value. 50% reduction in fee for owner occupied units	8% of market value. 50% reduction expanded to include tenants who buy units at conversion, and nonprofit/cooperative/cohousing projects
Maximum Unit Size	None	Projects with average unit size >3BR may not choose on-site unit option
Small Project Exemption	Projects with <5 units are exempt	Exemption removed; Reduced fee for projects with fewer than 12,000 gross residential square feet, phased in as size increases. Offer a local density bonus to projects providing <5 BMR units that

		choose in lieu fee.
Cap on rent increases	BMR Unit rents increase along with HUD Area Median Income	Limit annual rent increases to the change in the Consumer Price Index

Overarching Goals for Updating Requirements:

Center racial and economic equity by reversing exclusionary zoning

Berkeley has committed to pioneering policies that attempt to undo some of the harm caused by exclusionary zoning practices. In addition to its rent control and tenant protection policies, the City's Inclusionary Housing requirements are central to its efforts to build a more racially and economically integrated future.

Two key goals of the program are to ensure that affordable housing is included in all parts of the City and to promote the inclusion of affordable units within market-rate housing.

There has been quite a bit of academic research into the benefits of economic integration and the emerging consensus is that the location of affordable housing matters.[2] Much of the City's affordable housing is concentrated in neighborhoods with the greatest health and safety challenges and the least economic opportunity. Integrating affordable housing into every neighborhood offers significant health and economic advantages, particularly for low-income children. While the same research has consistently not found additional benefits from locating affordable units in the same buildings as market rate housing (beyond the neighborhood benefits), requiring affordable units in new market rate buildings has been a key way that cities have succeeded in locating affordable housing in certain 'high opportunity' neighborhoods.

Currently, both the Affordable Housing Mitigation Fee (AHMF) and Inclusionary Housing Requirements (IHO) ordinances allow developers to choose to either provide on-site units or pay a fee into the City's Affordable Housing Trust Fund program. Several recent Council referrals have focused on either reducing or eliminating the fee option in order to encourage more on-site affordable housing units in mixed income buildings. Other council referrals have called on the City to encourage payment of fees, which allow investment in non-profit owned 100% affordable projects. These projects leverage outside affordable housing funding to build more units at deeper levels of affordability and also offer critical social services.

While increasing the share of on-site affordable units continues to be an important community goal, it is important to note that this is not the only way that Berkeley is achieving the goal of

[2] The Urban Institute compiled a very helpful summary of several dozen research studies on the benefits of mixed income communities. *urban.org/uploadedpdf/412292-effects-from-living.pdf*

overcoming the legacy of segregation. Most of Berkeley falls into what is generally considered a moderate- to high-opportunity area, in part because the City offers high-quality schools to students regardless of which neighborhood they live in. At the same time, Berkeley has been successful in locating nonprofit affordable housing in most parts of the City. These broader realities reduce the pressure on the City's inclusionary housing policy to produce affordable units on-site in every building and allow the City to pursue a balanced strategy of private and publicly sponsored provision of affordable housing in every neighborhood. An appropriate goal might be for the City to target a mix of on-site units in most market rate buildings while maintaining the collection of critical fees to support nonprofit affordable properties.

Though our analysis confirmed that Berkeley's current rules appear to strongly favor payment of the fee, the actual record of projects over the past few years paints a different picture and shows that Berkeley's current policy is already achieving this kind of mix, with the majority of projects providing on-site units and paying a prorated fee.

Currently, providing an on-site affordable unit is generally far more costly to a developer than paying the associated fee. Just as an example, Street Level Advisors calculated that for a hypothetical Berkeley rental property, providing one on-site Very Low Income unit would reduce the resale value of a building by about $483,000. One on-site Low Income unit would reduce the building value by $340,000. Opting out of providing either of those units would require payment of an Affordable Housing Mitigation Fee totaling only $198,730.[3] While the specifics differ for each building based on the local market rents, in this example on-site costs more than twice as much as paying the current fee.

We estimate that the current AHMF costs roughly $45 per gross residential foot, and the on-site requirements cost a typical project roughly $114 per foot.

In spite of this, between 2012 and 2020 nearly two-thirds of Berkeley's projects have included some affordable units on-site and just under one-third have fully complied through the on-site option. Figure 3 shows that the mixed compliance option (some units plus some fee) has been the most popular option. There are likely several reasons for this, including political pressures, but one clear factor is the State Density Bonus (SDB). The State requires cities to allow developers who include affordable units to build more units on a site than would otherwise be allowed and to take advantage of certain planning and zoning concessions which make it easier to get projects built. Under the current rules, projects that provide at least 11% of their base project units affordable to Very Low-Income residents qualify for the maximum benefit under the Density Bonus. These benefits cause many Berkeley projects to include 11% affordable units on-site and pay the fee for the remaining units. A recent change to state law will allow a 50% density bonus to projects that provide 15% VLI units (among other options). This change should result in even more on-site units in Berkeley even under the current City ordinance.

[3] Because Berkeley requires $39,746 per unit or 1 on-site unit for every 5 units (20%), every on-site unit that is included reduces the fee by 5 times $39,746.

FIGURE 1: Compliance Option Selected 2012 - 2020

Encourage a mix of units and fees

The changes proposed below clarify Berkeley's policy to make on-site affordable units the preferred default requirement for both rental and ownership projects but allow payment of a fee as an alternative in order to:

1) continue to generate significant fee revenue to support nonprofit affordable housing projects throughout the City, and
2) offer flexibility for projects to choose between multiple compliance options depending on different circumstances.

Ideally, the proposed changes will encourage a mix of fees and units over time with fees coming primarily from projects where on-site units would be less feasible (e.g. due to economies of scale) or more difficult to monitor.

The proposed Affordable Housing Requirements ordinance would be structured so that providing on-site units is the default requirement for nearly all projects, with an exception for small projects and co-living type projects which would be encouraged to pay the fee. It might be possible to remove the fee option entirely, but state law requires cities to offer multiple compliance options such as a fee in their inclusionary housing ordinances. Ideally, the program would be structured such that the cost to a project of providing units on-site is more similar to the cost of paying the fee. This would maintain flexibility but reduce the incentive to pay the fee rather than provide units.

Over time, strong demand for housing in Berkeley should mean that higher fees are practical, but our analysis of current market conditions suggests that 2021 is a particularly risky time to raise Berkeley's housing fees. The Covid-19 pandemic has created uncertainty in the real estate market and led to falling rents throughout the region. The multi-family rental prototypes we studied earned returns that were just barely above the minimums required for financial feasibility. The recommendations below call for restructuring the fee to be calculated on a per square-foot basis but setting it, for the moment, at a level which is financially comparable to the current fee for most projects. Once the housing market has recovered from the effects of the pandemic, we recommend evaluating a fee increase which would bring the cost of the fee option closer to the cost of on-site compliance.

More immediately, the proposed changes recognize the growing popularity of mixed compliance based on the State Density Bonus and aim to increase the number of on-site units primarily by increasing the prevalence of these mixed compliance projects. Together these changes should increase the number of affordable units provided on-site within market rate projects throughout Berkeley without dramatically reducing the affordable housing fee revenue that the City's HTF program receives.

Continue Berkeley's legacy of value capture

A key goal of Berkeley' inclusionary housing ordinance and Affordable Housing Mitigation Fee has been to ensure that new real estate development projects in Berkeley contribute benefits for the whole community. This principle of Public Value Capture (or Land Value Capture) calls on the City to closely evaluate the profitability of real estate projects and set its housing requirements at a level which captures a share of the profits to support housing for our lowest income residents. Careful value capture requires close attention to the financing and economic realities of development in order to ensure that the City is capturing the appropriate amount of financial returns.

Appendix A contains a detailed description of Street Level Advisors financial feasibility study. Building on past studies conducted in support of Berkeley's Affordable Housing Mitigation Fee, we analyzed a single hypothetical rental and a single condominium building prototype in order to better understand the financial feasibility of these projects under the current program and under the proposed changes described below.

For rental projects, our model suggests that most projects would not be able to feasibly comply with the current 20% on-site requirement but that projects that choose to pay the fee or access the State Density Bonus by providing some units on-site and paying a partial fee would both earn returns that are just barely above the threshold we identified for feasibility (5% yield on cost). The returns for density bonus projects are comparable to the fee alternative because the additional cost of providing some units on-site is offset by the additional benefit of building more units on the same site.

For our rental prototype (described in Appendix A), the proposed fee of $45 per gross square foot results in a virtually identical return to what the project would see under the current fee. A higher fee ($55 per square-foot) would result in a marginal return. The proposed approach of providing more 'credit' for projects that provide on-site VLI units than those that provide LI units results in modest increases in the returns available to mixed compliance projects that take advantage of the State Density Bonus. While this small difference is not critical for this prototype, it is likely that there would be projects where this difference would result in on-site affordable units in projects that would otherwise have paid the fee entirely (or not moved forward at all).

Figure 2: Comparison of Returns - Rental

Scenario	Base Units	Bonus Units	LI Units	VLI Units	Fee $	Yield on Cost	% of Base	% of Total
Current Policy								
$39,746 Per Unit Fee	72	0	0	0	$2,861,712	5.08%	0%	0%
Onsite Units	72	0	7	7	$0	4.94%	19%	19%
Mixed Compliance - 11% VLI	72	25	0	8	$2,265,522	5.07%	11%	8%
Mixed Compliance - 15% VLI	72	36	0	11	$2,106,538	5.10%	15%	10%
Proposed Alternatives								
$45 Per Foot Fee	72	0	0	0	$2,967,750	5.07%	0%	0%
$55 Per Foot Fee	72	0	0	0	$3,627,250	4.99%	0%	0%
Mixed Compliance (Weighted) - 11% VLI	72	25	0	8	$2,350,809	5.10%	11%	8%
Mixed Compliance (Weighted) - 15% VLI	72	36	0	11	$2,184,925	5.12%	15%	10%

For ownership projects, there is no Yield on Cost metric; feasibility is generally evaluated based on the profit from sales as a percent of the total development cost. Because there have been very few recent condo projects in Berkeley, it is not possible to identify the exact threshold for feasibility. One common benchmark considers projects that earn more than 10% profit to be 'feasible." We found that neither the current fee nor the current on-site requirement resulted in profit as a percent of development cost above this 10% threshold. The proposed switch to a $45 per square-foot fee would result in profit just above 10% while a higher $55 per square-foot fee would result in profit closer to 9%.

Figure 3: Comparison of Returns - Ownership

Scenario	Total Units	LI Units	Fee $	Profit % of Cost
Current Policy				
Current Fee (based on sale prices)	56	0	$3,810,847	8.00%
Onsite Units	56	11	$0	1.13%
Proposed Alternatives				
$45 Per Foot Fee	56	0	$2,767,050	**10.88%**
$55 Per Foot Fee	56	0	$3,381,950	9.16%

Continue progress on housing goals

The Bay Area and the Berkeley community need more housing. Rapidly rising housing costs and growing displacement pressures are the result of a systemic shortage of housing. While building more housing alone would not be sufficient to address the current inequities, we cannot overcome our housing challenges without building significantly more housing. The Regional Housing Needs Allocation (RHNA) requires Berkeley to permit nearly 9,000 new homes at all income levels during the period from 2023 to 2031.

To meet this historic challenge, Berkeley's affordable housing policies must balance two critical but competing goals.

1) We must set affordable housing requirements high enough to produce meaningful levels of affordable housing, and
2) We must ensure that they are not too high for developers to accommodate.

If Berkeley sets its requirements too low, it may see construction that only serves to further existing inequity and racial exclusion. But if requirements are set too high, the result could be that little or no new housing is built, which would itself perpetuate the inequities which drive ongoing displacement of existing residents and push prices and rents up to levels which effectively prevent new low- and moderate-income households, including many households of color, from moving to Berkeley.

Berkeley's current affordable housing requirements (both the on-site requirements and the fee options) are somewhat higher than other East Bay jurisdictions (see Figure 6 below). But in spite of the relatively high costs, construction is continuing in Berkeley. Even during the pandemic, builders continue to undertake new residential projects. This suggests that Berkeley's requirements do not dramatically overburden development. However, Street Level Advisors' feasibility analysis (Appendix A) finds that the current requirements are only marginally financially feasible in today's environment. This suggests that Berkeley could see more building overall - including more affordable housing development - by slightly reducing the cost of compliance for some projects.

The proposed changes include many small adjustments to current requirements intended to make it easier for developers to understand and comply with program rules and for the City to oversee and administer. This will also facilitate transparency for the community at large. These changes are explicitly intended to make it easier to build the new housing that Berkeley desperately needs. However, the proposed changes attempt to achieve this while simultaneously maintaining or increasing the overall contribution that new market-rate housing makes to the provision of affordable housing in Berkeley.

Under the proposed changes, some types of projects are asked to contribute more and others less (relative to the existing inclusionary requirements), but the goal is to maintain or increase the number of on-site units and the amount of fees available to the HTF program. The proposed changes do this by reducing the fee assessed to projects with relatively smaller units and increasing the fee on projects with large or extra large units. They will also slightly reduce the fee due from projects that provide some units on-site. These changes should encourage more projects to build some units on-site while also improving overall feasibility so that more housing projects are able to move forward.

Work within the City's existing administrative capacity

Berkeley's current affordable housing requirements are among the most complex in the region, but the City has fewer administrative staff than many other jurisdictions. HHCS currently has a total of 1.3 FTE to implement the BMR program:

- 0.20 FTE to work on new projects (apply requirements, meet with applicants, draft and execute regulatory agreements);
- 1.0 FTE monitor for completed projects, funded by an annual monitoring fee on BMR units; and
- 0.10 FTE related policy work and program supervision.

Adopting changes to the City's affordable housing requirements that increase administrative requirements would only be possible if new General Funds could be identified to support the implementation. As the City's BMR portfolio expands, funding for an additional monitor should be a consideration as well. Implementing local affordability requirements is not an eligible use of federal funds, so local funds are required to support this activity.

The proposed changes described below add complexity to the rules in several places but attempt to offset the complexity by streamlining and eliminating administrative challenges in several other places. The goal is to design a program which the City can successfully implement with existing staffing resources.

Proposed Changes in Detail:

1. Consolidate Affordable Housing Requirements into a single framework

Proposed Changes:

1.1. Combine the requirements of the Affordable Housing Mitigation Fee (AHMF) and Inclusionary Housing (IH) ordinances into a single "Affordable Housing" ordinance which would impose on-site affordable housing requirements for both ownership and rental projects.

1.2. The fee would be structured as an "in lieu fee" offered as an alternative to on-site units, rather than as a mitigation fee.

1.3. The new ordinance would also replace the affordable housing requirements sections of the Condo Conversion and Live/Work ordinances.

1.4. To the extent possible, standardize the requirements that are applied to different projects to simplify implementation of the program.

1.5. The new ordinance would apply to all new project applications received after a date specified several months after adoption.

Background and Analysis:

Prior to 2009, Berkeley had a single Inclusionary Zoning Ordinance (BMC Chapter 23C.12) which applied to both ownership and rental projects. In 2009, a Court of Appeals decision known as *Palmer/Sixth Street Properties LP v. City of Los Angeles* prevented California jurisdictions from enforcing inclusionary housing requirements on rental properties. Like many other cities, Berkeley responded by adopting an Affordable Housing Mitigation Fee (AHMF) (BMC section 22.20.065). Instead of requiring on-site units and then offering an in lieu fee as an alternative, the AHMF ordinance requires payment of a fee and allows the provision of on-site units as an alternative. This approach allowed Berkeley to achieve its policy goals without violating the restrictions imposed by the Palmer decision. But it created a situation in which the City had two different ordinances that attempt to impose similar requirements. The provisions of the Inclusionary Housing Ordinance that applied to rental housing remained in the Berkeley Municipal Code but were unenforceable and superseded by the AHMF ordinance.

In 2018, the California Legislature passed AB1505 which effectively overturned the Palmer decision and authorized the implementation of inclusionary housing requirements applied to rental properties. This legislation has allowed a number of cities to update their programs to combine rental and ownership requirements under a single inclusionary housing ordinance.

For example, in June 2019, the Mountain View City Council completed a two-phase process to update its Below Market Rate Program requirements. Mountain View now requires any new residential development, whether rental or ownership, to provide 15% of its units at affordable rents.[4] Similarly, after suspending its inclusionary rental housing requirement in 2011 to comply with the Palmer decision, the City of Menlo Park updated its Below Market Rate Housing Program to subject all new residential developments to its affordable housing requirements.[5]

Berkeley's new Affordable Housing Requirements (AHR) ordinance would address both rental and ownership projects (including Live/Work and Group Living Accommodations) and would impose an on-site affordable housing requirement for both while allowing payment of an in lieu fee.

2. Calculate the fee on a per square-foot basis

Proposed Change:

2.1. Calculate affordable housing fees on a per square-foot basis instead of per unit. Initially set the fee at $45 per gross residential square foot, which is roughly equivalent to the current fee for projects with typically sized units. Collect the fee at the time of Certificate of Occupancy eliminating the current discount for earlier payment. Increase the fee amount automatically based on the change in the California Construction Cost Index.

Background and Analysis:

Some stakeholders have expressed concerns that projects that propose units with large numbers of bedrooms are not being required to pay an appropriate fee. Because Berkeley charges its AHMF on a per unit basis, a project that chooses to include a number of 5-bedroom units for example, would pay far less proportionally than a similarly sized project with studio, 1- and 2-bedroom units. It is not clear whether this savings is enough to cause developers to choose much larger bedroom configurations since these large unit 'co-living' projects are a trend nationwide. But it is clear that Berkeley's ordinance creates an incentive for projects that select this configuration and there does not seem to be a public policy reason for Berkeley to prefer these extra-large units. While there are benefits to projects that include 'family sized' 2 and 3-Bedroom units (discussed in proposed change #9 below), beyond 3 bedrooms, new units are generally housing multiple unrelated individuals rather than families.

A number of cities have changed to calculating in lieu fees on a per square-foot basis. San Francisco and Santa Barbara both made this change in 2019 and San Jose made a similar change in early 2021. Instead of charging a flat fee per unit, the City would charge the fee for each square foot of residential space in the building regardless of how the building is divided up into

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[4] City of Mountain View, Below Market Rate Program, https://www.mountainview.gov/depts/comdev/preservation/homebuying/bmrhousing/default.asp

[5] City of Menlo Park, BMR Requirements for Residential Developers, https://www.menlopark.org/DocumentCenter/View/1493/BMR-Requirements-for-Residential-Developers

units. As an example, a 25,000 square foot building would pay the same fee whether it was split up into 50 small studios or 15 multi-bedroom co-living units.

Currently, in Berkeley, every rental project would pay $39,746 per unit (assuming that they provided no units on-site). For a typical project, this is equivalent to a fee of $45 per gross residential square foot, as illustrated in the table below.

"Gross Square Feet – Residential" is defined as all of the square footage of a new building (as defined in BMC 23F.04.010) minus any exclusively commercial space or indoor parking area. In a typical project, the gross square footage is roughly 1.25 times the net square footage.

We conducted a market analysis in order to estimate a per square-foot fee which would be equivalent to the current AHMF. We collected data on the unit sizes of 18 recent Berkeley projects. We then multiplied the average unit sizes by 1.25 to estimate the gross square footage of each of these projects. For each project, we calculated an 'equivalent per square-foot fee' by dividing the fee that the project would have paid under the current rules (assuming no on-site units) by the gross square footage. The equivalent per square-foot fees ranged from $38 to $65. The typical fee was approximately $45 which corresponds to an average unit size of 705 square feet.[6] Figure 4 shows the distribution of average unit sizes and equivalent square foot fees.

Figure 4: Impact of unit size on equivalent square foot fee calculation

[6] This excludes several outlier projects with very large or very small units.

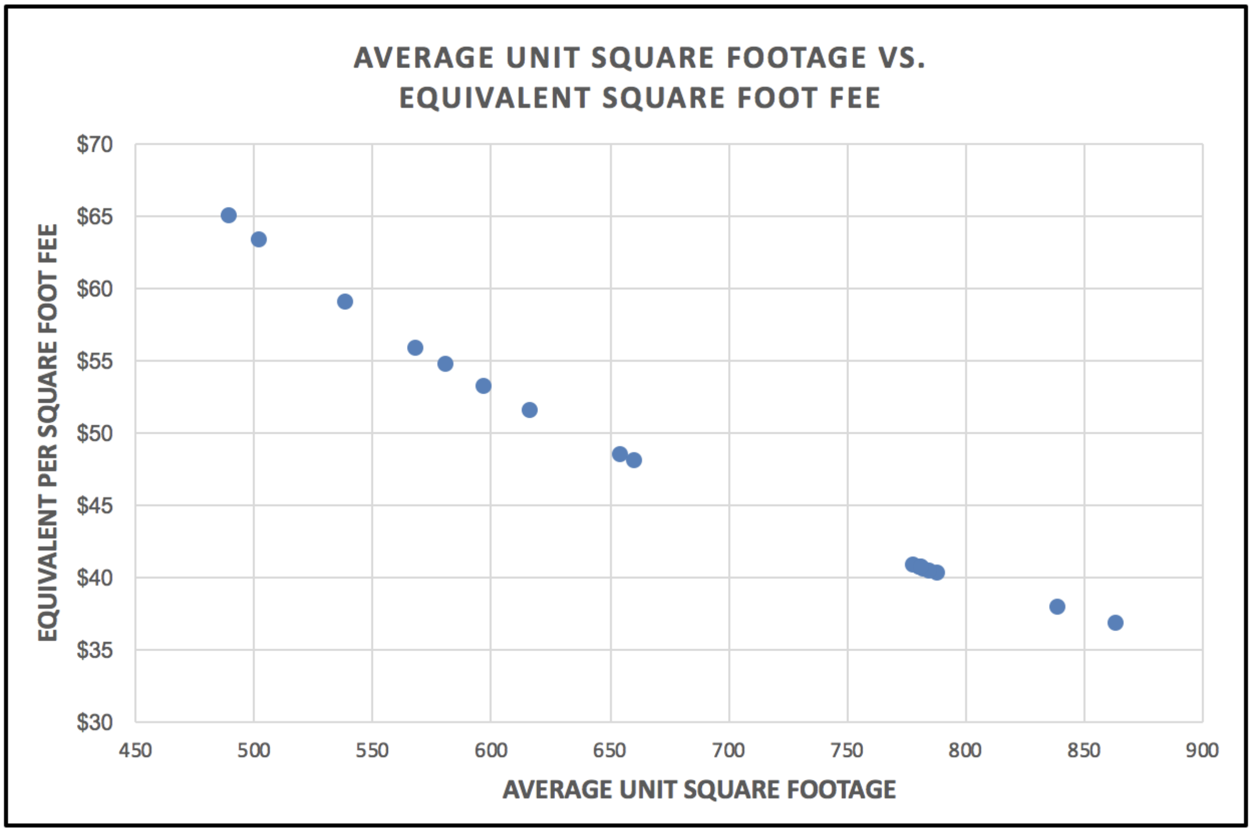


Figure 5 shows a sample of recent projects in order to illustrate the impact of switching to a per square-foot fee. Under the current per unit fee, projects that have the same number of units like Avalon and Hillside Village would pay the same amount of fee. The equivalent per square-foot fees ($37.91 vs. $48.14) show that Avalon is getting a much better deal by paying less relative to its size.

The per square-foot fee adjusts for the difference in project sizes. If Berkeley switched to a standard fee of $45 per square-foot, projects with small units such as the Delaware Apartments would pay a lower total fee while projects with large units such as Higby would pay higher total fees.

Figure 5: Equivalent per foot fees for recent projects - Examples

Project Name	Total Units	Average Unit Square Footage	Current Fee (Assuming $39,746 per unit)	Equivalent Per square-foot Fee	Projected Fee (assuming $45/sq.foot)
Higby	98	864	$3,895,108	$36.82	$4,760,145
Avalon	94	839	$3,736,124	$37.91	$4,434,615
Stonefire	98	782	$3,895,108	$40.65	$4,311,900
Hillside Village	94	661	$3,736,124	$48.14	$3,492,405
The Dwight	99	617	$3,934,854	$51.57	$3,433,680
The Delaware	51	581	$2,027,046	$54.72	$1,667,025

For comparison, Figure 6 provides fee levels for nearby jurisdictions.

Figure 6: Comparison of Inclusionary Housing Requirements and Fee Levels for Other Jurisdictions

City	% Affordable Housing Required On-site	Fee	Notes
Alameda	15% for all multifamily projects	$20,342 Per Unit	No alternative to fee for buildings of 9 or fewer units
Emeryville	20% for all multifamily projects	$31,032 Per Unit	
Fremont	12.9% for rental	$27.00 Per Residential Square Foot	
Hayward	6% for rental, 10% for ownership	$19.37 Per Residential Square Foot	Lower fees for high-density condos
Livermore	10% downtown, 15% everywhere else	$29.23 Per Residential Square Foot	Projects with 10 or more units may not pay fee
Oakland	10% if low- or moderate- income units, 5% if very low-income units	For multi-family: $22,000 per unit in Zone 1, $17,750 in Zone 2, $12,000 in Zone 3	
Pleasanton	15% for all multifamily projects	$45,083 per unit	
San Francisco	20% for small projects, 25% for large rental, 33% for large ownership	$199.50 Per Gross square foot times affordable percent	Equivalent to $60 per square-foot for many projects.
San Jose (proposed)	15% for all multifamily projects	Moderate Market Areas: $18.26 per net residential foot Strong Market Areas: $43	

The current AHMF ordinance allows developers to choose between paying a higher fee (currently $39,746) at the Certificate of Occupancy when a project is nearly complete or a reduced fee (currently $36,746) earlier when a project receives a building permit. Nearly all projects have selected the higher fee because of the high value that developers place on the ability to pay the fee later. Paying later reduces their financing costs and lowers their overall financial risk. Removing the option to pay early would recognize this reality and eliminate an additional element of administrative complexity and communication challenge.

The existing Affordable Housing Mitigation Fee is automatically adjusted by the annual percentage change in the California Construction Cost Index published by the California Department of General Services, every other year. The automatic adjustment is applied to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment. This automatic adjustment ensures that the fee keeps pace (roughly) with what it costs the City and its nonprofit partners to construct new affordable housing using the fee revenue. This method should remain in place.

3. Evaluate the potential for higher fees when the market is stronger

Proposed Change:

3.1. In order to encourage more on-site units, phase in a slightly higher fee once the housing market has stabilized. Conduct an updated feasibility analysis within 3 years, increase the per square-foot fee if the analysis shows that typical projects could support the higher fee.

Background and Analysis:

Under current market conditions, Berkeley's on-site compliance option (20%) is significantly more costly for most projects relative to the cost of the Affordable Housing Mitigation Fee or In-lieu Fee. This creates an incentive for projects to choose to pay the fee instead of providing units on-site. In spite of this incentive, the majority of projects have provided some level of on-site units because the State Density Bonus provides an even stronger incentive to include affordable units on-site, and the units count against the fee obligation as well.

Ideally, the on-site unit and in-lieu fee requirements would be more closely aligned so that they represented similar costs for most projects. This kind of alignment would likely result in a higher number of on-site units without entirely eliminating the fee revenue which is critical to Berkeley's HTF program. Aligning the economics of these two options would require either raising the fee or lowering the on-site requirement considerably.

In rough terms, the on-site requirement would need to be lowered to about 15% in order to represent a cost to most rental projects that was equivalent to the cost of the current AHMF. However, none of the local stakeholders we spoke with suggested that there would be public support for lowering Berkeley's on-site requirement.

A number of stakeholders, on the other hand, suggested raising the fee. This seems to be the more obvious path to aligning the cost of the two options and increasing the share of units on-site. However, our feasibility analysis (Appendix A) suggests that 2021 would be a particularly risky time to raise the affordable housing fee. The Covid-19 pandemic has created uncertainty in the real estate market. Rents in Berkeley have fallen significantly and rents in high-cost newly constructed buildings may have fallen more than the average. At the same time, construction costs have not (yet) fallen leaving most multi-family housing developments in a precarious position. Builders are still moving forward with new rental buildings in Berkeley but the City's volume of new applications has fallen relative to recent years. It seems likely that Berkeley will continue to be a desirable location for new housing over the long term but it is not yet clear whether there will be a protracted slow down in new building throughout the region following the pandemic.

While the level of local fees, including affordable housing fees, is just one small factor that developers consider when they decide whether or not to move forward with a project, Berkeley already charges more than most other East Bay jurisdictions and increasing the fee at this time could contribute to a greater slow down in new building.

For this reason, we are recommending that Berkeley allow for a period of housing market recovery before considering an increase in the Affordable Housing Fee. The City could plan on an update to the feasibility analysis in one to three years or wait for evidence that either rents have begun increasing or that construction costs have begun to fall before reconsidering the level of the fee.

4. Incentivize Extremely Low-Income (30% of AMI) units

Proposed Changes:

4.1. Require all VLI Units to be offered to voucher holders (50% to Housing Choice Voucher Holders and 50% to Shelter + Care Voucher Holders) before being marketed to other income eligible households.

Alternative:

4.2. Retain the current rules which require 40% of VLI units be offered first to Housing Choice Voucher Holders and another 40% be offered first to Shelter + Care Voucher Holders.

Background and Analysis:

A number of local stakeholders have expressed a desire to see Berkeley's program provide relatively more units to serve Extremely Low-income (ELI) households (below 30% of Area Median Income) who face the most acute housing challenges.

Some cities achieve this by creating a formula which allows developers to substitute a smaller number of units targeting Extremely Low Income residents for some portion of otherwise required on-site BMR units. Los Angeles's Transit Oriented Communities (TOC) program requires affordable units in exchange for a significant density bonus. The TOC program allows developers to choose between providing a greater number of low-income units or a smaller number of more deeply affordable Extremely Low Income units. Even though the rents on the ELI units are much lower, many developers have chosen this option because they can provide fewer affordable units (and more market rate units). Between 30% and 50% of the BMR units produced through the program have targeted ELI households and this program has driven a significant increase in the total number of income restricted ELI units produced in LA. In 2020, 34% of new BMR units in LA were restricted to ELI tenants.

While this type of approach might increase the number of ELI units in Berkeley, it is worth noting that Berkeley is already a national leader in serving ELI households through inclusionary housing. *Currently 29% of Berkeley's BMR tenants have incomes below 30% of AMI* and the share of ELI tenants is likely to increase noticeably under current rules. Berkeley's AHMF requires that at least half of BMR units must target 50% of AMI and, *of those*, 40% must be offered first to Housing Choice voucher holders from the Housing Authority and another 40% must be offered first to Shelter Plus Care voucher holders managed by the City's Housing and Community Services division. Voucher holders in both programs generally have incomes well below 30% of AMI. And because of the acute shortage of inexpensive market rate housing, most of the households that receive vouchers in Berkeley are unable to use them in the market. This approach has benefits for developers as well. The City allows the property to receive the contract rent offered by the subsidy program as long as the tenant's share of rent is below the BMR limit. The contract rents are generally far below the market rent for brand new buildings but also quite a bit higher than the BMR affordable rent for 50% AMI units. Because of the voucher, the ELI tenants, on the other hand, generally pay much less than the 50% AMI affordable rent.

In addition, because of the way Berkeley's requirements interact with the State Density Bonus (SDB), developers tend to favor the 50% AMI units. As a result, 77% of Berkeley's BMR units approved since 2012 have been regulated as 50% AMI units. If this pattern continues and, going forward, 80% of these units are reserved for voucher holders, then we would expect voucher holders to make up 62% of new BMR tenants.

A 2020 State law (AB 2345) expands the SDB beginning in January 2021. Developers will now be allowed to build 50% more units if they provide at least 15% VLI units (among other options). This new law should result in a greater number of on-site VLI units and, as a result, a greater number of ELI/voucher tenants. At some point, it is likely that the City would exhaust the supply of unused vouchers and some of these units would ultimately be leased to Very low Income tenants (below 50% of AMI) instead.

In addition to its success in serving ELI tenants in BMR units, the City currently requires that at least 20% of units in all projects funded with the Housing Trust Fund be affordable to ELI tenants.

Requiring that all VLI units first be offered to voucher holders would slightly increase the share of ELI tenants housed going forward while also removing an element of complexity from the program and simplifying otherwise complex rounding issues.

5. Adjust the residual fee for mixed compliance projects

Proposed Change:

5.1. Encourage more mixed compliance projects by changing the calculation of the remaining fee due when projects provide less than 20% affordable units on-site. Restructure the remainder fee so that providing VLI (50% AMI) units reduces the fee due by more than providing LI (80% AMI) units.

Alternative:

5.2. Continue the current practice of providing the same reduction in fee for any units, whether they serve VLI tenants or LI tenants.

Background and Analysis:

Currently rental projects that provide 20% affordable units on-site are exempt from the Affordable Housing Mitigation Fee (AHMF). Half of these units must be for Very Low Income (VLI) residents earning less than 50% of AMI and half must be for Low Income (LI) residents earning less than 80% of AMI. When a developer provides a portion of the required units on-site, the City has a formula that is used to determine the remaining fee. For example, if a project provides half of the required on-site units, they also owe half of the fee that would have been due. In order to access the benefits of the State Density Bonus, the majority of recent projects have selected this mixed compliance option.

Under the current rules, providing any on-site affordable housing unit reduces the fee that is due by the same amount regardless of whether the unit provided is a LI or a VLI unit. But because the VLI units rent for much less, they are much more costly to provide on-site. When a developer agrees to provide any permanently affordable unit, they will receive less rental income from that unit throughout the life of the project than they would from a market-rate unit. As a result, each affordable unit in a project decreases the value of a building - the amount that a building could be sold for. Street Level Advisors estimated the cost of providing these units on-site for a hypothetical six story project and found that a VLI unit reduces the value by $483,000 while a LI unit reduces value by $340,000.

One way to encourage more projects to provide some units on-site would be to restructure the remainder fee so that providing VLI (50% AMI) units reduces the fee due by more than providing LI (80% AMI) units. Based on the relative affordable rents, providing 10% VLI units could relieve the developer of $30 of the $45 per square-foot remainder fee, while providing 10% LI units could relieve them of only $15 of the $45 per square-foot fee. Projects providing fewer than the 10% of units required in either category would pay a fee adjusted proportionally.[7]

Figure 7: Examples to illustrate partial compliance - 100 unit project

Example	VLI units	LI Units	Fee
On-site Only	10	10	$0
Fee Only	0	0	$45
Only VLI	10	0	$15
Only LI	0	10	$30
Half Each	5	5	$22.50
11% VLI	11	0	$12
15% VLI	15	0	$0

This change would increase the feasibility of the mixed compliance options and should result in on-site units from some projects that would have otherwise selected to pay the fee. However it is important to note that this mixed compliance option is already the most popular option and appears to be financially feasible without this change.

6. Standardize ownership fees

Proposed Change:

6.1. Apply the same per square-foot fee for both rental and ownership units. Continue to require different income targeting for ownership units.

[7] The formula for calculating the reduction in fee could be (Full Fee* 1.33 / 20) * (actual % of VLI units) + (Full Fee * .67 /20) * (actual % of LI units). If the full fee is $45 per square-foot, then each 1% of VLI units would reduce the fee due by $3 per square-foot and each 1% of LI units would reduce the fee by $1.50 per square-foot.

Alternative:

6.2. Charge any project that chooses to record a Condominium Map a higher fee of $55 per square-foot.

Background and Analysis:

Many local stakeholders are under the impression that Berkeley's current Inclusionary In-Lieu Fee for ownership projects is higher than the Affordable Housing Mitigation Fee for rental projects. Berkeley has seen very few ownership projects in recent years, so it is difficult to directly compare, but our analysis suggests that this is true, both on a per unit and per square-foot basis.

In lieu of each affordable unit, the current Inclusionary Housing Ordinance allows payment of a fee equal to 62.5% of the difference between the market price and the "affordable" price. To estimate the equivalent per square-foot fee that this rate yields, we used proprietary data from Property Radar to calculate average square footages and market values for Berkeley condos, shown in Figure 8.

Figure 8: Condo pricing estimates

Berkeley Condo Sales 2021			Prototype (New Building)
Unit Size	**Avg Sqft**	**Avg Value**	**Projected Value**
Studio	646	$620,752	
1-BR	814	$703,556	$725,000
2-BR	1117	$853,125	$925,000
3-BR	1571	$995,797	$1,100,000

It is likely that newly built condos would sell for higher than average prices but there have not been enough Berkeley condo projects in recent years to calculate appropriate projections for new buildings only. We have assumed sale prices for newly built condo units would be roughly 5 to 10% higher than the citywide average condo sales prices.

The IHO defines the affordable price for the purpose of calculating the fee as three times (3x) the Area Median Income (AMI) adjusted for household size. We used those prices to estimate in lieu fees. We then multiplied those numbers by 20% to yield the equivalent per unit fee, which range from $48,000 to $85,000. This suggests that the fees required for ownership projects in the IHO are indeed higher than the $39,746 per unit currently required for rental projects under the AHMF. Our estimates for the equivalent per square-foot fees for ownership projects range from $54 to $75, which is higher than the typical equivalent per square-foot fees that we found for rental projects. Projects with very high cost condo units would face even higher fees.

Figure 9: Estimated BMR Ownership Fees 2021

Unit Size	Sq Ft	Market Price	Affordable Price	In Lieu Fee	In Lieu Fee Per Unit	In Lieu Fee per Sq Ft
Studio	646	$620,752	$234,960	$241,120	$48,224	$75
1BR	814	$703,556	$250,650	$283,066	$56,613	$70
2BR	1117	$853,125	$282,000	$356,953	$71,391	$64
3BR	1571	$995,797	$313,200	$426,623	$85,325	$54

Note that the median condo value in Berkeley has risen dramatically in recent years, from a low of $364,000 in 2012 to $900,000 in January 2021.[8] Because prices have risen much faster than income, the in lieu fee has risen too.

We analyzed the financial feasibility of the current fees for hypothetical affordable ownership projects (Appendix A) and found that the current fees resulted in profits that fall below commonly used benchmarks for necessary profit. High cost condos might be able to pay the fee and earn the minimum required profit but projects with sales prices closer to Berkeley's average condo prices were not. However, under current conditions, more typically priced condos were able to pay the proposed rental fee of $45 per square-foot and remain financially feasible. While there have not been enough condo projects in Berkeley recently to draw strong conclusions, this exercise lends support to the assertion that the relatively high level of Berkeley's fee for ownership projects is contributing to developer's choice to build rental rather than ownership housing.

The current policy appears to discourage homeownership development. Some local stakeholders have expressed an interest in adjusting the policy to give developers, and ultimately Berkeley residents, more choice between rental and homeownership housing. Setting the fee at $45 per square-foot for both types of project would level the playing field considerably. The typical ownership unit would still pay more because ownership units tend to be larger. As an alternative, many cities charge homeownership units slightly more. Setting

[8] Zillow Home Value Index for Condos/Co-ops, https://www.zillow.com/berkeley-ca/home-values

Berkeley's fee at, for example, $55 per square-foot for ownership projects would slightly disincentivize ownership but by less than the current fee approach.

Addressing rental projects that record condo maps

Another reason to consider standardizing the fee between rental and ownership projects stems from the fact that a growing number of new multi-family buildings are recording condominium maps but opening initially as rental housing projects. This gives project owners the flexibility to later sell the rental units as condos if housing market conditions change. The added flexibility makes it easier for developers to access project financing or to access financing on better terms.

For projects that provide on-site affordable rental units, the City records restrictions which require that the BMR units remain affordable rentals for the life of the project. But the potential for projects that are initially rental and pay the AHMF but later convert to ownership is not addressed in Berkeley's current code. Projects that paid the AHMF as rental projects and later sold condo units would owe an additional fee, but monitoring and collecting this fee is administratively and legally challenging.

Some cities have responded to this trend by requiring projects that record a condo map when they are first built to pay a higher affordable housing fees that would be due for ownership projects even if the building is initially operated as rental housing. This would not be practical under Berkeley's current approach because the ownership in lieu fee is set based on the actual sale price of units but those may not be determined for many years (if ever). Setting a single in lieu fee that would be applied to both rental and ownership projects at the time of development would eliminate this complexity. Alternatively, setting a higher fee per square-foot for projects with a Condo Map would also provide a practical alternative, though it might increase costs on rental projects that are not likely to ever actually convert to ownership but need the Condo Map in order to access certain financing sources.

7. Standardizing Live Work and GLA requirements

Proposed Change:

7.1. Remove the exemption for Live / Work projects from IHO/AHMF ordinances; apply the same requirements to Live / Work projects as any other project except for the "affirmative marketing" provision

7.2. Remove the exemption for units with Group Living Accommodations (GLA) tenancy (and consider retaining an exemption for University-recognized GLAs)

Background and Analysis:

A 2018 Council Referral (2018-09-12, Item 17) called for the elimination of the affordable housing requirements in the Live Work Ordinance and removal of the live/work exemptions from both the IHR and AHMF ordinances. This action would simply apply the Inclusionary Housing or AHMF ordinances to Live Work exactly as they are applied to other projects.

Live/Work units are currently exempt from both the Inclusionary zoning ordinance and the Affordable Housing Mitigation fee. Instead, Berkeley's Live Work Ordinance (Berkeley Municipal Code 23E.20) requires projects that create 5 or more Live/Work units to include 1 inclusionary unit affordable to 80% of AMI for every 5 Live/Work units created. The inclusionary requirements in the Live/Work ordinance differ from the requirements applied to other projects. Affordable units under the Live/Work ordinance are all targeted to 80% of AMI. In addition, the Live Work Ordinance specifically allows inclusionary Live/Work units to be smaller, have lesser finishes and be located anywhere in a project while both the IHR and AMHF ordinances require units to be the same size, have comparable finishes and be distributed throughout a project.

There is one provision of the Live/Work ordinance which is specific to Live/work affordable units which it would make sense to retain or move to the new ordinance. Inclusionary live/work units must be affirmatively marketed to "income-eligible persons performing a work activity permitted in the District where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units." The ordinance currently provides no standards for documenting tenants' need for live/work space or rules for waiving this requirement in the event that a tenant with this need cannot be found within a reasonable period.

The ordinance currently exempts Group Living Accommodations (GLA) units, but because this classification represents a type of tenancy rather than a specific type of unit, it would make sense to subject GLA units to the Affordable Housing Requirements like any other unit. Fraternities, sororities, and other specially designated units managed by the University would retain their exemption. Further study could be necessary to assess the impact of this change on project feasibility.

8. Add a land dedication option

Proposed Change:

8.1. Add a land dedication option which authorizes the City Manager to approve donation of land to the City or an approved nonprofit housing developer. Donated land must be appraised for a value of at least 75% of the in lieu fee which would otherwise be due, be sufficiently sized and zoned to support multifamily housing development and otherwise be suitable for affordable housing development.

Alternative:

8.2. Don't add a land dedication option - continue with two compliance options; on-site units or in lieu fee, though this would leave projects newly excluded from the on-site option with only one compliance option.

Background and Analysis:

Some stakeholders have suggested that the program would be stronger if Berkeley allowed developers to comply by providing off-site affordable projects, preserving existing 'naturally occurring affordable housing' or dedicating land for affordable housing development. We evaluated the feasibility of adding off-site and preservation options and concluded that Berkeley currently lacks the staff capacity necessary to effectively implement these complex options. However, it is worth noting that the City can and does use in lieu fee revenue collected to finance both off-site projects and preservation/rehabilitation projects. By collecting fees and then going through the existing procedures for the HTF and Small Sites programs, the City avoids the need to develop new detailed rules and closely monitor developer implementation of these alternatives.

The third option, land dedication, however, provides an outcome which the City cannot achieve on its own through the use of fee revenue. While this option also would require detailed rules to avoid abuse, it may be less challenging than off-site or preservation options and is likely to be used in far fewer cases.

Access to sites is one of the key barriers facing affordable housing developers. Market rate developers sometimes end up with control over sites which could be better used for affordable housing. Sometimes market rate projects are large enough to set aside a portion for affordable housing. In these, somewhat rare, cases, it is sometimes more affordable for the developer to donate land for affordable housing than to build on-site units or pay an in lieu fee. If the donated site is appropriate for affordable housing, it can save significant time and make new projects possible. Of course, if sites are not appropriate, land donation can result in a significant burden on City resources. If the policy were to include a land dedication option, the City would need to develop detailed guidelines which outlined site requirements and retain the option to only accept sites when there is a high probability that they will be developable for affordable housing including, for example, expressions of interest from local affordable housing developers.

9. Provide a family sized units option

Proposed Change:

9.1. In lieu of providing 20% of units at affordable prices, allow projects to provide affordable units comprising 20% of the Gross Residential Floor Area in the project provided that at least 50% of those units are in 2 or 3 bedroom units.

Background and Analysis:

Berkeley's IHR and AHMF ordinances currently require that on-site BMR affordable units be of the same type and size as market rate units in the property. As the cost of construction has risen, there has been a trend for market rate projects to include smaller and smaller apartments and this has meant that the BMR units have been shrinking as well. Some stakeholders have asked the City to consider ways to incentivize more 'family sized' units even in buildings where the market rate units are quite small. This request has been made at the same time that other stakeholders have called for the City to actively discourage units with high bedroom counts (i.e., co-living units).

It seems that in the current context the City should be encouraging 2 and 3-bedroom units but not larger ones. One way to achieve this is to require that projects set aside a given percentage of floor area for affordable housing instead of a percentage of units if the majority of those units are 2 and 3-bedroom units.

When New York City adopted their Mandatory Inclusionary policy for the first time in 2016, rather than requiring a percentage of units be affordable, they required that the affordable units make up a percentage of net residential floor area.[9] This allows developers to include larger or smaller affordable units. Projects offering smaller BMR units may need to provide more units and projects offering larger units would provide fewer units. Cambridge, MA, a city with size and demographic similarities to Berkeley, also switched to this method in 2017, but with the additional condition that large developments (30,000 square feet or more) are required to include 3-bedroom affordable units.[10] Both of these approaches would add considerable complexity to already complex rules in Berkeley. The proposed change would continue to require 20% of units for most Berkeley projects, but would add an alternative for projects that chose to offer mostly 2 and 3 bedroom BMR units.

10. Simplify the requirements for condominium conversions

Proposed Changes:

10.1. Calculate the Condo conversion fee at 8% of the market value of converted units.

10.2. Reduce the conversion fee to 4% for any unit that is and has been occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date that the fee is paid, including as a tenant in that unit immediately prior to ownership.

10.3. Also reduce the conversion fee to 4% for any co-housing unit, any unit that is part of a housing cooperative, or conversion undertaken by a nonprofit developer.

10.4. Continue to allow a further 25% discount in the fee if it is paid at the time of conversion rather than at the time of sale of condo units.

10.5. Add flexibility in the use of conversion fees. Allow up to 10% of conversion revenue to be used for Condominium Conversion program delivery and/or Housing Trust

[9] New York City Mandatory Inclusionary Housing Program, https://www1.nyc.gov/site/planning/plans/mih/mandatory-inclusionary-housing.page

[10] City of Cambridge Inclusionary Housing, https://www.cambridgema.gov/CDD/housing/inclusionaryhousing

Fund program and project monitoring and enforcement or related program administrative costs with the remaining 80% placed into the Housing Trust Fund.

Background and Analysis:

Berkeley's Condominium conversion ordinance (CCO) (Berkeley Municipal Code [BMC] Chapter 21.28 et seq.) requires payment of an Affordable Housing Mitigation Fee at the time that rental properties are converted to condominium ownership. Between 1992 and 2009 this mitigation fee recaptured essentially the entire difference in affordability that resulted from conversion. This had the effect of discouraging conversions. In 2005, the state Court of Appeal held that cities could not prohibit conversion of rental units to Tenants in Common ownership (TIC). Since then, the City has sought to encourage conversion of rental units to condominiums rather than TICs because of difficulties that can arise for people who invest in TIC properties. It has done so by imposing a de facto cap on the affordable housing mitigation fee charged for conversion to condominiums since 2009.

Nexus Fee Calculation: Under the current ordinance the AHMF for condo conversions is calculated through a complex 'nexus formula' that considers costs of ownership, rental and mortgage rates. Alternatively, owners can choose to pay 8% of the sales price (or 4% for 2-unit buildings) instead of the Nexus Fee if they agree to limit rent increases for any existing tenants. This alternative calculation generally results in much lower fees. As a result, the nexus-based fee method has been used very rarely. We recommend that all condominium conversions be subject to the 8%/4% fee, and that all sitting tenants be provided protections and an opportunity to purchase.

Examples:
Nexus Formula: Rental Costs = $1,500 per month x 12 months/year = $18,000 annually Ownership Cost (including principal, interest, taxes, insurance, and homeowners' association dues) = $2,700 per month x 12= $32,400 Assume a mortgage rate of 6.5 percent. Increased housing cost due to ownership conversion of the unit = $32,400 - $18,000 = $14,400 Mitigation Fee = $14,400/0.065 = $221,538

Alternative Formula: Sale price for converted unit = $400,000. If owner agrees to limit rents to existing or future tenants. Mitigation fee = 8% x $400,000 = $32,000.

Discount for Owner Occupants/Tenant Conversion: Currently, the condo conversion ordinance provides a 50% reduction in the fee to owners who have lived in their units for the 5 prior years. However, only owners who resided in their units on June 30, 2010 are currently eligible.

If the property contains three or more units, the affordable housing mitigation fee for a unit that is occupied by an owner as their principal place of residence for at least 5 consecutive years immediately prior to the date of sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent, but only if the owner owned and resided in the unit as of June 30, 2010.

A Council referral had proposed to extend the 50% reduction to tenants in addition to owners who have lived in a unit for at least 5 years prior to conversion so long as the building was 4 or fewer units.

> *If the property contains 4 units or fewer, the affordable housing mitigation fee for a unit that is and has been occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date of conversion or sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent.*

It is not clear why this tenant conversion benefit should be limited based on building size. The current ordinance is limited to properties with 3 or more units while the referral was limited to 4 or fewer units. The proposed change would apply to owner occupied or tenant purchased units in buildings of any size.

Although instances of condominium conversion by nonprofits, in co-housing projects, or in housing cooperatives are quite rare, it makes sense to extend the fee reduction to these cases as well.

Use of Fee Revenue: The current condo conversion ordinance does not allow any of the Mitigation Fee revenue to be used for program administration, but the program can be staff-intensive to implement. The AMHF and IHR Ordinances allow a portion of fee revenue to be used for program administrative staffing.

11. Prohibit on-site units for Group Living Accommodation (GLA)

Proposed Change:

11.1. Prohibit projects with an average of more than 3 bedrooms per unit from selecting the on-site option in order to reduce administrative burdens.

11.2. Adopt a local density bonus that enables these projects to access the benefits of the State Density Bonus in exchange for an increased in lieu fee instead of on-site units.

Background and Analysis:

Group Living Projects: It is challenging to regulate and monitor BMR units in co-living and group living projects where individuals generally lease bedrooms not apartments. It is difficult to find eligible households who can both qualify for and afford 4-bedroom or larger BMR units and the households that would most benefit from large BMR units might be less interested in living in a building that was primarily targeting students and young adults. Additionally, it is typical for groups of unrelated adults renting larger units together to change composition frequently, which makes maintaining current documentation of eligibility more complicated for owners and therefore compliance more difficult for the City to monitor.

Local Density Bonus: Berkeley cannot prevent developers from providing on-site affordable units in order to qualify for the benefits of the State Density Bonus (SDB). It would be possible for the City to simply require some projects to pay the full fee even if they provide on-site units for the purpose of accessing the density bonus but this would impact the feasibility of small projects and projects that provide large bedroom count units. An alternative would be for the City to adopt a limited local density bonus program for these projects that are not allowed to provide on-site units under the City's ordinance. This local bonus could provide access to all of the benefits of the State Density Bonus (including additional density and other planning concessions) in exchange for a fee rather than on site units. We calculated that, for a typical rental project, providing 11% (of base units) on-site increases the cost of compliance relative to paying the fee only by $10 per square-foot. If a local density bonus offered the benefits of 35% increased density and other concessions to projects that paid $55 per square-foot (instead of $45) this option would be no more or less attractive to developers than the current State Density Bonus option. In other words, if a co-living project could access the density bonus in exchange for a fee of $55 per square-foot they would generally choose that option rather than provide onside units.

12. Change requirements for small projects/missing middle projects

Proposed Changes:

12.1. Eliminate exemption for 1-4 unit projects and replace it with a tiered fee that steps up gradually for projects with less than 12,000 gross residential square feet, by reducing the fee by $2 per square-foot for each 1000 square foot increment less than 12,000.

12.2. Offer a local density bonus, equal to the State Density Bonus, to projects providing <5 BMR units that choose the in lieu fee.

Alternative:

12.3. Eliminate exemption for 1-4 unit projects and expect even very small projects to contribute the full fee.

Background and Analysis:

Currently both the AHMF and the Inclusionary housing ordinance exempt buildings with 1-4 units. Presumably this exemption was motivated by a sense that very small projects would have a harder time absorbing the cost of including affordable housing into their budgets. While this is often, but not always true, there is no reason to think that suddenly at 5 units a project budget can easily afford to comply. There is a much wider range of "missing middle"-type projects that may be feasible in Berkeley at a small scale which may also struggle to meet the City's requirements. Many of these projects may be larger than 5 units.

At the same time there has been significant concern in Berkeley about the potential that developers may segment larger projects into several smaller 4-unit projects in order to circumvent the inclusionary housing or AHMF ordinance. By exempting very small projects but then suddenly imposing the full requirement at a certain point, the current ordinance creates an incentive to build projects in 4-unit increments.

One approach to this challenge would be to impose the fee (at some level) on every project (with the exception of Accessory Dwelling Units), but to reduce the fee for small projects. Many cities just impose a lower fee for smaller projects. San Jose just amended their program to set the fee at a level that is 50% lower for projects with fewer than 20 units. However, this approach still creates a big step up at 20 units. An alternative is to gradually phase in higher fees as the size of the project increases. Figure 10 shows the schedule that would result from a $2 decrease in the fee for each increment of 1000 gross residential square feet below 12,000.

Figure 10: Proposed schedule for small project phase-in

Gross Residential Square Feet	Fee per square-foot
12,000+	$45
11,000-11,999	$43
10,000-10,000	$41
9,000-9,999	$39
8,000-8,999	$37
7,000-7,999	$35
6,000-6,999	$33
5,000-5,999	$31
4,000-4,999	$29
3,000-3,999	$27
2,000-2,999	$25
1,000-1,999	$23
<1,000	$21

Reducing the fee for small projects would have an uncertain impact on Berkeley's future fee revenue. The City would collect less revenue from small projects with at least 5 units, but would begin collecting fees from 1 to 4 unit projects. Offering a local density bonus to projects providing less than 5 BMR units that choose the in lieu fee would likely reduce the number of projects with a small number of on-site BMR units that need to be monitored while also increasing total fee revenue.

Small projects pose a special challenge for program administration and monitoring. Monitoring compliance for a building with one or two regulated units requires a similar investment of staff time as a project with 20 BMR units. Often the owners of smaller buildings have fewer resources and less outside professional property management support and as a result, they often find the burdens of compliance more challenging, and require relatively more intervention and training from City staff.

Many cities address this by encouraging developers of small properties to select the fee or other option rather than providing on-site BMR units which may prove difficult to monitor.

Redwood City prohibits the on-site units option for projects with fewer than 20 total units, effectively requiring these projects to pay the in lieu fee.

In Berkeley, however, because so many projects select mixed-compliance, there is a real risk that projects with more than 20 total units could end up including only a very small number of on-site BMR units. For example a 40 unit project selecting on-site compliance (20%) would provide 8 BMR units but if they chose to only provide 10% on-site and pay a fee for the remainder they would only provide 4 BMR units on-site. Removing the on-site option for projects that would result in fewer than 5 BMR units would force these projects to either pay the fee entirely or fully comply through the on-site option. Either option would simplify monitoring enormously.

13. Cap the annual rate of rent increases

Proposed Change:
13.1. Limit the annual increase in BMR affordable rents for occupied units to no more than the annual change in the Consumer Price Index. Allow rents to be marked up to the maximum 'affordable' rents based on HUD AMI calculations whenever units turn over.

Alternative:
13.2. Limit the annual rent increase to no more than 10% in any single year.

Background and Analysis:
Sudden increases in the Area Median Income can result in large changes in the allowable affordable rent which can negatively impact BMR tenants. Similarly, some property owners fail to annually adjust rents as allowed by the current ordinance. They are allowed to 'catch up' by raising the rents by a larger amount later but this too can cause sudden shocks in rent for vulnerable tenants.

Limiting the amount that rent can be increased for occupied BMR units would provide stability and predictability for tenants. This change, however, will have a real impact on the operating budgets of projects with on-site BMR units. The current rules tie rents to changes in the Area Median Income (AMI). Over the past several decades the AMI has risen quite a bit faster than the Consumer Price Index. While the AMI is generally a measure of what people in the area earn, the rapid increase in the AMI has been driven, in part, by the growth of high paying jobs and the influx of higher income residents throughout the Bay Area rather than a rise in the wages and other income that lower-income residents earn. As a result, 'affordable' rents have risen faster than what many low-income tenants can comfortably 'afford.'

Limiting the rate of rent increases will have a real impact on the operating budgets of buildings that include on-site units. As long as units remain occupied, the rents may rise more slowly than building operating costs. It is likely that this change in policy will make the on-site option slightly less attractive to developers and increase the likelihood of projects selecting to pay the fee in lieu. However, a growing number of Berkeley projects are including on-site VLI units and then filling those units with residents who hold housing vouchers. The policy should continue to allow these properties to collect the full voucher payment standard which might increase faster than CPI without impacting affordability for the residents. This reliance on vouchers should mean that many density bonus projects would not be impacted by a rule tying rent increases to CPI.

14. Administrative changes

a. Require compliance plans

Proposed Change:

14.1. Require developers of new projects to submit a simple Affordable Housing Compliance Plan at the time of Building Permit application indicating their proposed strategy for complying with the requirements of the AHR ordinance. Allow revisions to this plan at any time prior to the Certificate of Occupancy.

Background and Analysis:

Currently developers can wait until their projects are built and applying for a Certificate of Occupancy to inform the City of their intended strategy for complying with the AHMF or Inclusionary Housing Ordinance, including whether they intend to pay the fee or provide some or all of the required on-site units. Requiring developers to indicate a proposed strategy earlier in the process a) allows city staff to make plans for monitoring units or project fee revenue so that it can be invested quickly and b) ensures that developers are fully understanding Berkeley's requirements early in the development. Many cities provide a simple fill in the blanks template for this purpose and allow projects to change their plans at a later date by simply submitting a revised plan.

b. Authorize administrative citations

Proposed Change:

14.2. Explicitly authorize the creation of a proposed schedule of fines for monitoring and compliance violations to be included in the program guidelines.

Background and Analysis:

Other jurisdictions have found that having the ability to impose monetary fines is an effective tool for encouraging developer and property manager compliance with monitoring requirements. Explicitly authorizing citations in the ordinance might help clarify staff's authority to impose these penalties.

c. ***Authorize annual monitoring fee for ownership units***

Proposed Change:
14.3. Explicitly authorize the City to charge a fee annually to BMR Homeowners to offset monitoring costs. The fee would be assessed only on new owners going forward. The fee would be included as a housing cost in calculation of the affordable sales prices so that buyers will pay less for their units in order to make the fee affordable.

Background and Analysis:
The City currently charges owners of rental properties an annual monitoring fee but no fee is charged to BMR homeowners.

d. ***Deduct required fees/costs from gross rent***

Proposed Change:
14.4. Clarify this language in the ordinance to make it clear that mandatory fees or costs must be deducted from the maximum allowable rent for BMR rental units.

Background and Analysis:
Currently the AHMF ordinance calls for reduction in the maximum rent based on the anticipated cost of tenant paid utilities. Some properties impose other mandatory costs such as renter's insurance or administrative fees. Current practice is to deduct any cost which is mandatory for BMR tenants from the maximum gross rent to calculate the affordable rent but this requirement is not currently outlined in the ordinance.

Appendix A: Financial Feasibility Analysis

Overview:

The City of Berkeley retained Street Level Advisors to recommend changes to its existing affordable housing requirements. Our policy recommendations are intended to increase the construction of affordable units while maintaining the financial feasibility of market-rate development. We conducted a financial feasibility study in order to understand the current housing development environment and predict how our recommended policies might affect this environment. Our study relies on a static pro forma analysis to estimate the return on investment that can be generated by typical residential developments in Berkeley.

For the rental prototype, we used a common measure of return known as yield on cost (YOC), or a project's net operating income divided by the total development cost. Based on a review of current market conditions in Berkeley and the East Bay, we concluded that projects earning a yield of at least 5.0% would be "feasible" meaning that they would likely be able to secure investment. Projects earning slightly less (between 4.5% and 5%) would be considered "marginal" meaning that some projects in this category might be able to obtain financing while others might not. Projects earning less than a 4.5% yield we considered "infeasible."

For ownership projects, the Yield on Cost cannot be calculated so we used a different measure of profitability: Profit as a percent of development cost, also called Return on Cost. Because of the lack of recent condo projects in Berkeley, we were unable to objectively determine the minimum necessary profit as a percent of cost for local ownership projects. As a point of reference, a common rule of thumb used in other studies considers projects "feasible" when profit exceeds 10-15% of development cost.

Our rental prototype is a 6-story, 72-unit development with a small amount of commercial space on the ground floor and one parking space for every two housing units. We estimate that under current conditions, rental projects that choose to pay Berkeley's Affordable Housing Mitigation Fee (AHMF) earn a Yield on Cost of 5.08% - just barely above the feasibility threshold. Projects that provide on-site units earn a yield of 4.94% just under the threshold into the marginal category. However, economic conditions are in flux due to the COVID-19 pandemic, and new projects could become more feasible in the near future.

Our prototype, revenue, and cost assumptions are based on prior studies, comparable projects, and other market research. The remainder of this memo describes these assumptions and our methodology in more detail.

Prior Studies:

Over the past decade, the City of Berkeley has evaluated the financial feasibility of its affordable housing requirements several times. Our analysis builds on the feasibility studies conducted by these consultants.

The 2015 Bay Area Economics Nexus Study contains one section that addresses the financial feasibility of new rental housing. BAE estimated the Return on Cost for a four-story, mixed-use development in the C-W zoning district at two different fee levels. In their simplified model, all 81 units are 900 square foot two-bedrooms. BAE's analysis suggested that the fee could be increased to $34,000 while maintaining the minimum necessary return on cost.

The 2016 Strategic Economics Feasibility Analysis tested a wider range of fee levels. Using a four-story model that is almost identical to the BAE model, they estimated the Yield on Cost at six fee levels between $0 and $84,391. Strategic Economics considered Yield on Cost because it is a more accurate measure of feasibility for rental housing than Return on Cost. The minimum Yield on Cost required for feasibility in their analysis was 6.5% reflecting the higher interest rate environment in 2016. They found that new developments would be marginally feasible if the fee was $45,000 and infeasible if the fee was any higher.

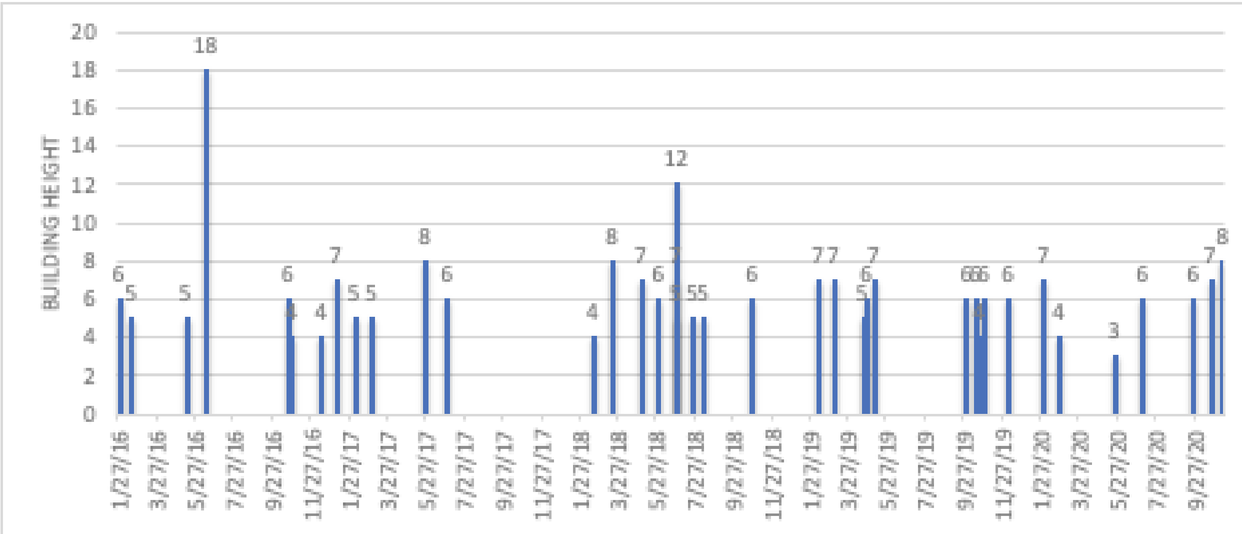
Together, the BAE and Strategic Economics analyses suggested that new rental development would be feasible at fee levels equivalent to and above the current level.

Prototypes Studied:

Rents and construction costs have escalated dramatically since the Strategic Economics analysis was published. Our recent data shows that rents are over 30% higher and the construction costs per square-foot in our model below are nearly double those in the Strategic Economics report. Our specific revenue and cost assumptions are described in the next section.

Because of these trends, the type of development project that both BAE and Strategic Economics used as their example would no longer be financially feasible in Berkeley. Driven by these same trends, the types of development projects being undertaken in Berkeley have shifted. Developers have responded to rising construction costs by building smaller units, fewer parking spaces and taller buildings on smaller lots. Figure 1 shows that developers of multi-family buildings in Berkeley have been primarily proposing 5-8 story buildings in recent years.

Figure 1: Permit applications for residential project with >20 units 2016 – 2020



Following these trends, we have used a slightly different prototype to test feasibility in today's market. Our prototype is a 6-story building with wood frame residential over a concrete podium. Where BAE and Strategic Economics assumed a 1-acre lot, we have assumed a half-acre. Our prototype includes 72 housing units and 3,000 square feet of commercial space (see Figure 2). Our model is taller but contains fewer units and less commercial space than the 4-story, 81-unit Strategic Economics prototype. The units in our model are also smaller than the units in the Strategic Economics analysis. Based on a detailed study of recent projects in Berkeley we have assumed a mix of 450 square-foot studios, 725 square-foot one-bedrooms, and 925 square-foot two bedrooms where Strategic Economics had assumed that all units would be 900 square-foot two-bedrooms.

Recent data also suggests that the capitalization rate for residential development is 4.0-4.25%, significantly lower than the cap rate of 5.0% which Strategic Economics used in 2016. Additionally, the parking ratio of 1 space per unit in the Strategic Economics study reflects the minimum parking requirements in much of the city at the time their study was published. As parking minimums have recently been eliminated, we assume a more modest parking ratio of 0.5 spaces per unit, consistent with observed occupancy rates.

Figure 2: Rental Prototype Details

Prototype Feature	Value
Project	
Construction Type	Wood Frame over Concrete Podium
Stories	6
Site Area in Acres	0.5
Gross Sq Ft	68,950
Residential Sq Ft	52,750
Common Area Sq Ft	13,200
Commercial Space Sq Ft	3,000
Residential Units	
Number of Units	72
Number of Studios	14
Number of 1BD Units	36
Number of 2BD Units	22
Studio Sq Ft	450
1BD Sq Ft	725
2BD Sq Ft	925
Parking	
Parking Ratio (Spaces / Units)	0.5
Number of Spaces	36

For the ownership prototype, we assumed larger average unit sizes. In order to facilitate comparison, we assumed a building of the same overall size (square feet) but with fewer units of larger size. We also assumed the same parking ratio (.5) as our rental prototype in order to facilitate comparison, though it is more likely that a condo project would provide 1 space per unit which would lower overall returns.

Figure 3: Ownership Prototype Details

Prototype Feature	Value
Project	
Construction Type	Wood Frame over Concrete Podium
Stories	6
Site Area in Acres	0.5
Gross Sq Ft	61,490
Residential Sq Ft	52,290
Common Area Sq Ft	9,200
Commercial Space Sq Ft	0
Residential Units	
Number of Units	56
Number of 1BD Units	35
Number of 2BD Units	18
Number of 3BD Units	3
1BD Sq Ft	850
2BD Sq Ft	1,025
3BD Sq Ft	1,365
Parking	
Parking Ratio (Spaces / Units)	0.5
Number of Spaces	28

Revenue and Cost Assumptions:

The revenue and cost assumptions used in our pro forma analysis are shown in Figure 4. The main inputs that influence project revenue are the residential rents. Our analysis of data from CoStar, RealPage, and Berkeley's Rent Stabilization Board led us to estimate that typical rents for newly built apartments in Berkeley would be approximately $3,100 for studios, $4,000 for one-bedrooms, and $4,500 for two-bedrooms. Other revenues include commercial rents of $3 per square-foot and parking revenue of $200 per space per month. These assumptions reflect rents that would have been assumed by projects prior to the pandemic. During the pandemic, rents throughout the region have fallen dramatically with some estimates showing rent in Berkeley down by 5 to 10% along with significant increases in apartment vacancy rates. The best available evidence suggests that these decreases are likely temporary. Developers in

Berkeley are moving forward on construction of new apartments which would not be financially feasible if the pandemic rents and vacancy rates were permanent.

The key input driving costs is the construction cost estimate of $400 per gross square foot. This assumption is based on actual construction costs for comparable East Bay projects and studies that estimate the construction cost inflation rate. Other important development cost assumptions include land at $8,000,000 per acre and parking construction costs at $50,000 per space. We assume that soft costs - which include architecture, engineering, and inspection fees – equal 22% of hard costs. Our estimates for land, parking, and soft costs rely on data from several comparable Berkeley projects but, of course, these figures vary quite a bit between actual projects. Financing costs include the construction loan interest rate of 4.5% and the initial construction loan fee of 1.0%. Our financing cost assumptions are based on independent estimates of prevailing interest rates and data from comparable Berkeley projects.

The current inclusionary housing rules require that 80% of on-site VLI units be offered first to housing voucher holders. Berkeley allows developers to charge the full Housing Authority Payment Standard rent for these units even when it exceeds the rent that could be charged to a VLI tenant with no voucher. We have assumed these slightly higher rents for 80% of any VLI units on-site.

Note: The COVID-19 pandemic caused an uncommon economic crisis that the US is only beginning to recover from. It is unclear what persistent impacts the pandemic will have on the housing development environment and consequently on our model. We cannot be certain how inputs such as construction costs and rents will change or how investors that finance development will respond to this uncertainty. Over the past year construction costs have continued to rise while rents have fallen across the Bay Area. This combination has made it harder for real estate projects to achieve feasibility, but these trends do not appear to be lasting. Our model reflects conditions as they were at the beginning of 2020.

Figure 4: Revenue and Cost Assumptions

Revenue/Cost	Assumption	Unit of Measure
Residential Revenue		
Studio Rent	$3,100	per unit per month
1BD Rent	$4,000	per unit per month
2BD Rent	$4,500	per unit per month
Ownership Revenues		
1BD Price	$725,000	per unit
2BD Price	$925,000	per unit
3BD Price	$1,100,000	per unit
Other Revenues		
Commercial Rent	$3.00	per sq ft per month
Parking Revenue	$200	per space per month
Development Costs		
Construction Costs	$400-$415	per gross sq ft
Land Costs	$8,000,000	per acre
Parking Costs	$50,000	per space
Soft Costs	20-22%	of hard costs
Financing Costs		
Construction Loan Interest Rate	4.5%	annual rate
Loan to Cost Ratio	70%	of total cost
Period of Initial Loan	24	months
Initial Construction Loan Fee	1.0%	of loan
Average Outstanding Balance	60%	of loan
Operating Costs		
Rental Vacancy Rate	4%	of units unoccupied
Rental Operating Cost	35%	of revenues

Policy Scenarios:

We built a financial model using the project prototypes described above in order to test the impact of potential changes to the City's affordable housing requirements on the feasibility of residential development. We ran the model for the same hypothetical projects under a number of different policy assumptions. First, we established the returns that would be available under the current law depending on which performance option the project selected.

Current Program Scenarios

Rental

Current Fee: Under this alternative, we assume the hypothetical project elects to pay Berkeley's current Affordable Housing Mitigation Fee (AHMF) of $39,746 for each unit in the building. A project paying the fee would not be eligible for the density bonus.

Current On-site Units: Under this alternative, we imagine the project selecting instead to provide on-site units as provided under the current AMHF ordinance. The project would provide 7 Very Low Income (VLI) units (10%) and 7 Low Income (LI) units (10%). For the sake of comparison, we have assumed that the project does not access the density bonus though it would likely qualify.

Current Mixed Compliance – 11% VLI: The most common approach in recent years has been for projects to provide enough units on-site in order to maximize the benefits of the State Density Bonus and pay a fee to cover the remainder of their obligation under Berkeley's AHMF. Prior to 2021, projects that provided 11% of base units as restricted Very Low Income units on-site would receive the maximum 35% density bonus. We have assumed that our hypothetical project could increase the total number of housing units by 35% (from 79 to 97) with no increase in land costs[11].

Current Mixed Compliance – 15% VLI: In 2020 the State Legislature approved an expansion of the State Density Bonus which allows greater increases in density in exchange for more affordable housing units on-site. Now a developer can request a 50% increase in residential density if they provide, for example, at least 15% Very Low Income units. We have analyzed the profitability of a hypothetical

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[11] Our analysis does not attempt to capture the full financial value of the density bonus. In addition to the right to build more housing units on a given site, state law allows developers to request a number of planning concessions based on the amount of affordable housing that they provide. These concessions clearly provide real value which can increase the profitability of projects. However, because the dollar value of concessions is abstract and highly dependent on the particular project, we have not attempted to include this in our financial modeling. As a result, our conclusions are likely to slightly understate the difference between the returns from density bonus and other types of projects.

project assuming a 50% increase in units with 15% of base units (10% of total units) restricted to VLI residents under current rules.

Ownership

Current On-site Compliance: A for-sale project that elected to provide on-site affordable units would be required to provide 20% of units to be affordable to and occupied by Low Income households earning less than 80% of AMI.

Current In Lieu Fee (Based on Sales Prices): Alternatively, a developer may pay an in lieu fee calculated based on 62.5% of the difference between the market price and the affordable price. This approach results in a different level of fee for different projects depending on the market prices of units in the project. For the sake of illustration, we estimated a range of current market prices based on average condo sales prices listed on Zillow.com and calculated the fee which would be due.

Figure 5: Condo Pricing Assumptions

Estimated BMR Ownership Fees 2021						
Unit Size	**Sq Ft**	**Estimated Market Price**	**Affordable Price**	**In Lieu Fee**	**In Lieu Fee Per Unit**	**In Lieu Fee per Sq Ft**
1BR	814	$703,556	$250,650	$283,066	$56,613	$70
2BR	1117	$853,125	$282,000	$356,953	$71,391	$64
3BR	1571	$995,797	$313,200	$426,623	$85,325	$54

Alternative Policy Options

In addition to evaluating the performance of the prototype under the current policy rules, we considered several alternative scenarios based on the proposed policy changes.

Rental

$45 Per square-foot Fee: Under this alternative, we assumed that the City adopted a fee of $45 per gross square foot (excluding parking and commercial space) and we evaluated the returns for a prototype project that elected to pay this fee in full with no on-site BMR units.

$55 Per square-foot Fee: This alternative assumes full payment of a higher fee per square-foot.

Mixed Compliance (Weighted)– 11% VLI: In this alternative we have assumed a $45 per square-foot fee is adopted along with an adjusted formula for determining the remainder fee for mixed compliance projects. We assumed that each 1% of VLI units provided would reduce the fee due by $3 per square-foot and each 1% of LI units would reduce the fee by $1.50 per square-foot. In this alternative, we assume a project that provides 11% of the base units (equivalent to 8% of total units) as VLI in order to receive a 35% density bonus.

Mixed Compliance (Weighted)– 15% VLI: In this alternative we assume a project that provides 15% of the base units (equivalent to 10% of total units) as VLI in order to receive a 50% density bonus under state law. As with the scenario above, this alternative assumes that the formula for calculating the remaining fee for mixed compliance provides greater reductions for projects that provide VLI units.

Ownership

$45 Per Square-foot Fee: In this scenario, we have assumed that the City adopts a single per square-foot rate of $45 which would be applied to all projects whether rental or ownership.

$55 Per Square-Foot Fee: This alternative assumes that the City adopts a higher per square-foot fee for ownership projects (or any project that records a condominium map).

Findings:

For rental projects, our model suggests that most projects would not be able to feasibly comply with the current 20% on-site requirement but that projects that choose to pay the fee or access the State Density Bonus by providing some units on-site and paying a partial fee would both earn returns that are just barely above the threshold which we identified for feasibility (5% yield on cost). The returns for density bonus projects are comparable to the fee alternative because the additional cost of providing some units on-site is offset by the additional benefit of building more units on the same site.

For this prototype, the proposed fee of $45 per gross square foot results in a virtually identical return. A higher fee ($55 per square-foot) would result in a marginal but very close to feasible return. The proposed approach of providing more 'credit' for projects that provide on-site VLI units than those that provide LI units results in modest increases in the returns available to mixed compliance projects that take advantage of the State Density Bonus. While this small difference is not critical for this prototype, it is likely that there would be projects where this difference would result in on-site affordable units in projects that would otherwise have paid the fee entirely (or not moved forward at all).

Figure 6: Comparison of Returns - Rental

Scenario	Base Units	Bonus Units	LI Units	VLI Units	Fee $	Yield on Cost	% of Base	% of Total
Current Policy								
$39,746 Per Unit Fee	72	0	0	0	$2,861,712	5.08%	0%	0%
Onsite Units	72	0	7	7	$0	4.94%	19%	19%
Mixed Compliance - 11% VLI	72	25	0	8	$2,265,522	5.07%	11%	8%
Mixed Compliance - 15% VLI	72	36	0	11	$2,106,538	5.10%	15%	10%
Proposed Alternatives								
$45 Per Foot Fee	72	0	0	0	$2,967,750	5.07%	0%	0%
$55 Per Foot Fee	72	0	0	0	$3,627,250	4.99%	0%	0%
Mixed Compliance (Weighted) - 11% VLI	72	25	0	8	$2,350,809	5.10%	11%	8%
Mixed Compliance (Weighted) - 15% VLI	72	36	0	11	$2,184,925	5.12%	15%	10%

For ownership projects, we found that neither the current fee nor the current on-site requirement resulted in profit as a percent of development cost above the benchmark of 10%. The proposed switch to a $45 per square-foot fee would result in profit just above 10% while a higher $55 per square-foot fee would result in profit closer to 9%.

Figure 7: Comparison of Returns - Ownership

Scenario	Total Units	LI Units	Fee $	Profit % of Cost
Current Policy				
Current Fee (based on sale prices)	56	0	$3,810,847	8.00%
Onsite Units	56	11	$0	1.13%
Proposed Alternatives				
$45 Per Foot Fee	56	0	$2,767,050	**10.88%**
$55 Per Foot Fee	56	0	$3,381,950	9.16%

Sensitivity Analysis:

Revenues and Costs: The feasibility projections above are highly sensitive to assumptions about rents and construction costs. These assumptions are different from one project to the next and change in somewhat unpredictable ways over time. The heat table in Figure 8 below shows the yields on cost that our model predicts for a range of different scenarios in regard to construction costs and rents for our prototype. This table shows returns for a 6-story rental project that selects the proposed $45 per square-foot fee option. The axes indicate how these scenarios compare with current construction cost and rent levels. The (0%, 0%) cell in the center of the table represents the estimated yield on cost for projects given today's rents and construction costs. The (-10%, 10%) cell in the top right represents the yield for projects if rents decrease 10% and construction costs increase 10% relative to current levels. Green cells represent situations in which projects will be feasible, with expected yields on cost at or above 5%. The redder a cell is, the less feasible projects will be. A rise in construction costs will increase the total development cost of a project, making it less feasible. A drop in market rents will decrease the rental income a project can expect, also making it less feasible.

Figure 8: Yield on Cost Sensitivity to Rents and Construction Costs

		Construction Costs										
		-10%	-8%	-6%	-4%	-2%	0%	2%	4%	6%	8%	10%
Rents	-10%	5.07%	4.96%	4.85%	4.75%	4.65%	4.56%	4.47%	4.38%	4.30%	4.22%	4.14%
	-8%	5.18%	5.07%	4.96%	4.85%	4.76%	4.66%	4.57%	4.48%	4.40%	4.32%	4.24%
	-6%	5.29%	5.18%	5.07%	4.96%	4.86%	4.76%	4.67%	4.58%	4.49%	4.41%	4.33%
	-4%	5.40%	5.29%	5.17%	5.07%	4.96%	4.86%	4.77%	4.68%	4.59%	4.50%	4.42%
	-2%	5.52%	5.40%	5.28%	5.17%	5.07%	4.96%	4.87%	4.77%	4.68%	4.60%	4.51%
	0%	5.63%	5.51%	5.39%	5.28%	5.17%	5.07%	4.97%	4.87%	4.78%	4.69%	4.61%
	2%	5.74%	5.62%	5.50%	5.38%	5.27%	5.17%	5.07%	4.97%	4.87%	4.78%	4.70%
	4%	5.85%	5.73%	5.60%	5.49%	5.38%	5.27%	5.17%	5.07%	4.97%	4.88%	4.79%
	6%	5.97%	5.84%	5.71%	5.59%	5.48%	5.37%	5.26%	5.16%	5.07%	4.97%	4.88%
	8%	6.08%	5.95%	5.82%	5.70%	5.58%	5.47%	5.36%	5.26%	5.16%	5.07%	4.97%
	10%	6.19%	6.06%	5.93%	5.80%	5.69%	5.57%	5.46%	5.36%	5.26%	5.16%	5.07%

With current rents and construction costs, projects are just barely feasible with estimated yields of 5.07%. However, if rents rise by just 2% and construction costs remain flat, projects will become more feasible with expected yields of 5.17%. As expected, yields increase as rents rise and decrease as construction costs rise. Yield on cost is just slightly more sensitive to construction costs than rents. Construction costs falling by 10% will increase yields a bit more than rents rising by 10%.

Parking: The feasibility of new rental development in Berkeley is also highly sensitive to assumptions about the amount of parking provided. The parking ratio is the number of parking spaces divided by the number of residential units. Before 2021, Berkeley's zoning regulations mandated projects in some districts to have parking ratios of at least 1. Berkeley recently eliminated minimum parking requirements, making parking ratios of 0 possible.

Figure 9 shows the yields on cost that our model predicts for a range of parking scenarios. In our model, parking ratios are used to describe the amount of parking provided by a project. Creating parking spaces is expensive and limits the area available for the project's residential or amenity space. As a result, higher parking ratios reduce a project's yield on cost and projected feasibility. Our model predicts that projects that provide no parking will be solidly financially feasible while projects that provide 1 space per unit are not currently feasible.

Figure 9: Yield on Cost Sensitivity to the Parking Ratio

Parking Ratio				
0.00	0.25	0.50	0.75	1.00
5.34%	5.20%	5.07%	4.94%	4.82%

Even with strong financial incentives and no City parking requirements, most projects are likely to include significant amounts of parking. Depending on the location of the project, tenants may see parking as a necessary building amenity. In other cases, project investors insist on some level of parking. When Seattle eliminated parking requirements in many parts of the city, one study found that most projects still included parking. In areas with no parking requirement, nearly 30% of new buildings provided no parking after the mandate was removed. But the remaining 70% provided parking even though it was not required by the city. Figure 10 shows that the average project provided .49 parking spaces per unit.

Figure 10: Seattle parking reform results

Minimum Number of Required Parking Spaces/Unit	Number of Development Projects	Average Parking Ratio	Buildings That Exactly Met Requirement	Buildings That Provide Parking Above Requirement		
				<0.5 Spaces/Unit	0.5-1.0 Spaces/Unit	>1.0 Spaces/Unit
0	570 (65.6%)	0.49	29.5%	24.2%	39.0%	7.4%

Sophie Hahn
City Council District 5
510-981-7140
shahn@cityofberkeley.inf

CONSENT CALENDAR
January 25, 2022

To: Honorable Members of the City Council

From: Councilmember Hahn (Author), Councilmember Taplin (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)

Subject: Referring the Civic Arts Commission's *affordable housing for artists in Berkeley* Report and other Artist Live, Work and Live-Work opportunities to the Housing Element Update

RECOMMENDATION

1. Refer the Civic Arts Commission's report entitled *affordable housing for artists in berkeley* to the City Manager, Planning Commission, and Housing Advisory Commission to review, consider, and incorporate recommendations, to the greatest extent possible, into the Housing Element update and related planning and zoning processes.

2. Refer to the City Manager, Planning Commission, and Housing Advisory Commission consideration of the feasibility and impacts of allowing ground floor affordable live, work, and live-work space for artists in certain commercial, manufacturing, and mixed-use buildings/areas, both new-build and existing, and exploration of other opportunities for living, work and live-work space for artists.

SUMMARY/CURRENT SITUATION:

Affordable living and work-space for artists is a pressing issue for our community, with artists increasingly priced out and unable to live and work in Berkeley. Affordable housing for artists has been identified in numerous planning documents as a key need. Most recently, the Civic Arts Commission generated a report entitled *affordable housing for artists in berkeley* that reported data about the unique housing and space needs of artists, based on a survey and focus groups with diverse artists and cultural workers. (See Attachment 1: *affordable housing for artists in berkeley)*. The report was presented at the December 8, 2021 Civic Arts Commission meeting, and generated important discussion around housing and work-space affordability for artists.

Berkeley is currently engaged in an in-depth process to update the City's Housing Element. The results of the update will shape the development of housing in Berkeley for much of the next decade. A key component of the Housing Element is to identify sites that can accommodate future housing needs across income levels and other demographic factors. The Housing Element also involves the development of a variety of approaches to meet community housing and affordability needs such as zoning updates and new affordable housing requirements and programs.

With the Housing Element update process already in progress, it is important for the recently completed *affordable housing for artists in berkeley* report to be referred and the report's findings and recommendations to be incorporated into the Housing Element Update, as feasible.

In addition to the findings and recommendations of the *affordable housing for artists* report, an informal group of artists has been discussing the possibility of allowing ground-floor commercial space to be substituted for affordable artist work- or live-work space in new-buildings, or in existing buildings via conversions in some locations or building types. Because there are many elements to consider, including impacts to the retail environment, feasibility and costs, quality of work- and living-space for artists, relationship to affordable housing and community benefit requirements in new-build, locations and buildings types where artist ground floor live-, work- and live-work space may be feasible, and more, this idea is referred more generally to the City Manager, Planning Commission, and Housing Advisory Commission (HAC).

Exploration of other potential means to create, convert and/or reserve affordable living, work, and live-work space for artists is also referred, allowing the City Manager, Planning Commission, and HAC to broaden their analysis and consultation to consider all opportunities to create affordable living and work-spaces for artists.

To the extent feasible opportunities for affordable artist living and live-work space may be identified from the *affordable housing for artists in berkeley* report or through additional exploration, concepts should be incorporated into the Housing Element Update.

BACKGROUND:

The City's 2018-2027 Arts and Culture Plan Update identifies affordable artist housing as the first of five strategic goals:

Goal 1 Increase Access to Affordable Housing and Affordable Spaces for Artists and Arts Organizations
Support the long-term sustainability of the arts and culture sector by expanding the availability of affordable housing and spaces for both artists and arts organizations.

The Plan Update also includes the following introductory remarks:

"Berkeley is home to a vibrant and diverse community that strongly values its rich cultural fabric. Characterized by its collective nature, the city is famous for its distinguished university, beautiful natural setting, and its remarkable history as a home for progressive movements. Arts and culture permeate civic life in Berkeley through numerous acclaimed theaters, performing arts spaces, as well as the city's many artists. Over 150 arts and culture nonprofits operate in Berkeley and together they contribute to a dynamic, continually evolving arts and culture community that interacts closely with other sectors of the city's economy. The nonprofits that make up the arts community are particularly diverse in terms of their size and their creative disciplines.

Along with the cultural richness the arts infuse into the community, the arts sector is also a significant economic driver, generating an estimated $165 million in total economic activity. In 2017, Berkeley Mayor Jesse Arreguin stated that "in addition to fostering civic pride, a flourishing arts scene [brings] new visitors to our city and more revenue to local businesses." Currently, as the San Francisco Bay Area is experiencing substantial economic growth, rising real estate and living costs have created an especially challenging environment for the arts community in Berkeley. Some artists and arts organizations are leaving the city because they can no longer afford to live and work here."

Most recently, the Civic Arts Commission generated a report entitled *affordable housing for artists in berkeley* that reported data about the unique housing and space needs of artists, based on a survey and focus groups with diverse artists and cultural workers. (See Attachment 1: *affordable housing for artists in berkeley)*. The report was presented at the December 8, 2021 Civic Arts Commission meeting, and generated important discussion around housing and work-space affordability for artists.

Discussions of affordability in the arts ecosystem are often anecdotal, with few studies to provide comprehensive data to inform potential solutions. To provide more comprehensive information, the Civic Arts Commission requested and received a report with findings based on a survey and focus groups. The study consulted a diverse group of Berkeley artists and cultural workers and provides systematic data around the unique housing and space needs of artists. The report explicitly seeks to position Berkeley's arts community for inclusion in the City's affordable housing efforts and to help improve the safety of local arts spaces while avoiding further displacement.

The study was initially conceptualized in 2019 in response to concerns around housing and art space affordability among artists and arts organizations in Berkeley, and was motivated by two events.

First, the 2018 Arts and Culture Plan Update for the City of Berkeley identified -- as a primary goal -- the need to increase access to affordable housing and spaces for artists, cultural workers, and arts organizations. The cultural plan specified a number of action steps towards this goal, including undertaking a data-informed assessment of current art space affordability challenges and displacement risks in Berkeley, as well as the development of strategies to protect and create affordable spaces for Berkeley artists, cultural workers, and arts organizations based on the assessment's findings.

Second, in November 2018, the voters of Berkeley approved two bond measures totaling $135 million to fund affordable housing in Berkeley. Berkeley City Council subsequently began the development of an affordable housing framework (Housing for a Diverse, Equitable and Creative Berkeley) to guide Berkeley's affordable housing policies, programs, and projects through 2030. This framework explored a wide array of affordable housing for artists and other creative workers. In July 2019, the Council referred this policy document to various Commissions for further development. However, the pandemic caused this work to be temporarily put on hold.

The survey and subsequent report on its findings was completed and released by the Civic Arts Commission in November 2021. It made several key findings and recommendations that relate to zoning and planning decisions which may potentially be made as part of the ongoing Housing Element Update.

Some key findings of the report include recommendations that the City of Berkeley:

1. Create policies that prioritize artists for new affordable housing

    Artists are an important part of the fabric of Berkeley as a city. As such, they should be part of ongoing conversations about Berkeley's housing plan. The survey results demonstrate that artists -- as a group -- have low income, a high rent burden, and have traditionally been left out of ongoing affordable housing. In order to mitigate further displacement and allow artists to continue to work and thrive in Berkeley, the City could consider creating a priority category for artists who meet income qualification to access affordable housing."

2. Designate some of Berkeley's upcoming affordable housing funding from Measure O for units specific to artists

   "On July 24, 2019, Berkeley's Civic Arts Commission approved an amendment recommendation for Measure O that called for "significantly increas[ing] the supply of affordable housing and live/work housing for artists, artisans, and cultural workers" through adding to the zoning ordinance, incentivizing developers to build market-rate housing that includes affordable live/work units for creative workers, and incorporate live/work spaces for artists and cultural workers into large-scale affordable housing projects."

3. Consult artists when designing new policies for live/work spaces

   Across the Bay Area, responses to the Ghostship fire emphasized increased attention to artist DIY live/work spaces. These spaces were often the only options for artists to access live/work spaces that met their needs. Yet, artists have always worked to transform neighborhoods through their work and creative use of space. As Berkeley works to address affordability issues for all of its residents, consulting and involving artists in the planning process can help bring about a much-needed, new, and fresh perspective on issues such as rezoning, repurposing ground floor spaces, and requiring community benefit proposals for new development.

4. Develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline

   Due to the nature of their work, artists often have a unique income structure that makes applying for affordable housing more difficult. In addition, the survey shows that artists have needs for certain types of spaces that might be difficult to identify. Funding technical assistance to support artists to translate their needs and apply for the existing affordable housing pipeline could be an important step in helping artists leave inadequate living situations.

Because the report and findings include important information about the housing and space needs of artists, the *affordable housing for artists in berkeley* study is being referred to the Housing Element Update and to the Planning Commission and HAC for immediate consideration.

In addition to the findings and recommendations of the *affordable housing for artists* report, an informal task force of artists has been discussing the possibility of allowing ground-floor commercial space to be substituted for affordable artist work- or live-work space in new-buildings, or in existing buildings via conversions, in some locations or building types.

Because there are many elements to consider, including impacts to the retail environment, feasibility and costs, quality of work- and living-space for artists, relationship to affordable housing and community benefit requirements in new-build, locations and buildings types where artist ground floor live-, work- and live-work space may be feasible, and more, this idea is referred more generally to the City Manager, Planning Commission, and Housing Advisory Commission (HAC).

The presence of artists living and working around the clock has been documented as an important factor in creating more livable, animated urban areas. At the same time, retail vacancies have risen steadily in recent years as more purchasing has migrated online. The COVID-19 pandemic has accelerated this trend and led to even greater amounts of empty space, even in Berkeley's most popular commercial areas. Removing barriers to use or re-use of vacant retail/commercial spaces may be a means to provide affordable live/work spaces for artists while also activating storefronts.

To explore the possibilities of using retail/commercial space to house working artists, an informal task force including members of the Civic Arts Commission, affordable housing advocates, artists, and developers was convened. The goal of the group's work was to increase active uses of often-vacant ground floor space and provide a new low-impact supply of affordable live/work spaces for artists.

Some of the ideas generated by this informal group include:

1. Allowing affordable live/work housing for artists in lieu of ground floor retail or commercial use in specific locations (for example, away from main commercial nodes, or on side-streets) or corridors, including the San Pablo and University Avenue corridors and/or in other appropriate locations.

2. Developing a clear set of allowable uses and criteria for tenant eligibility including the responsibility to maintain a lively street presence.

In addition to consulting with the arts community, including members of the informal task force, the City Manager, Planning Commission and HAC should consult with business and commercial property owners to fully understand the opportunities and challenges of allowing live-work in lieu of retail, and to identify the circumstances, requirements, locations and other factors that could make affordable live-work ground floor uses work both for artists, and for the health and vitality of commercial districts.

ALTERNATIVES CONSIDERED

By referring the *affordable housing for artists in berkeley* report and its findings and other affordable living and work-space considerations to be developed simultaneous with and/or as part of the Housing Element, we can ensure that artists' unique housing, work-space and affordability needs are considered during the Update process, and incorporated as feasible in the Housing Element and other zoning and planning processes.

FISCAL & STAFF IMPACTS

Staff and the Commissions are already engaged in in-depth discussion of housing needs, zoning changes, and programs to meet housing and affordability needs communitywide. Adding more explicit consideration of the specific needs of artists, drawing from studies already completed and with input from the Arts Commission and arts community, will add important information to existing discussions. Additional formal study or consulting help is not envisioned.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This referral asks only for concepts to be studied and incorporated into a planning process already underway, and does not entail environmental or climate impacts.

CONTACT PERSON

Councilmember Sophie Hahn, shahn@cityofberkeley.info; 510-682-5905

Attachments

1. affordable housing for artists in berkeley

affordable housing for artists in Berkeley

a baseline survey

Anh Thang Dao-Shah, ph.d.& Asif Majid, ph.d
creative equity research partners
December 2021

contents

executive summary

This project aims to respond to concerns around housing and art space affordability among artists and arts organizations in Berkeley by answering two key questions:

1) What are the trends around local affordability issues that can be addressed through targeted resources and policy solutions?
2) What pre-existing housing disparities impact what artists seek in possible affordable housing solutions?

As in other parts of the Bay Area, narratives of concern around affordability in the arts ecosystem in the past decade are often anecdotal. The sector lacks comprehensive data that could inform system change solutions. To that end, this report is based on a survey and focus groups with a diverse group of artists and cultural workers in Berkeley to provide systematic data around the unique housing and space needs of artists. It seeks to better position Berkeley's arts community to participate in the City's current affordable housing efforts and help improve the safety of local arts spaces, without causing further artist displacement.

key findings

Artists are highly educated, yet have low income
Berkeley's artists and artists/cultural workers who responded to the survey are highly educated (88% have a Bachelor's degree or higher). Yet, 60% of that same group has lower, very low, or extremely low income.

Artists and cultural workers have multiple forms of employment
Only 32% of all respondents reported that they are employed full time. Others indicated that they cobble together different types of part-time and short-term contract work, as well as self-employment, in order to make ends meet.

Artists are rent burdened
Artists and artists/cultural workers disproportionately rent their living space (71%). Of those who rent, 77% are rent burdened or severely rent burdened, based on the California's Department of Housing and Community Development definitions.

Artists have a unique need for flexible live/work spaces
Responding artists and artists/cultural workers indicated, at a rate of 82%, that they do their creative work in their living space. Of those respondents, over half (56%) practice artistic disciplines that require extra ventilation.

recommendations

- **create policies that prioritize artists for new affordable housing**
- **designate some of Berkeley's upcoming affordable housing funding from measure O for units specific to artists**
- **consult artists when designing new policies for live/work spaces**
- **develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline**
- **pilot a guaranteed basic income program for qualifying artists**

introduction

why this project?

This project was initially conceptualized in 2019 in response to concerns around housing and art space affordability among artists and arts organizations in Berkeley. It was motivated by two events.

First, the 2018 Arts and Culture Plan Update for the City of Berkeley identified -- as a primary goal -- the need to increase access to affordable housing and spaces for artists, cultural workers, and arts organizations. The cultural plan specified a number of action steps towards this goal, including undertaking a data-informed assessment of current art space affordability challenges and displacement risks in Berkeley, as well as the development of strategies to protect and create affordable spaces for Berkeley artists, cultural workers, and arts organizations based on the assessment's findings.

Second, in November 2018, the voters of Berkeley approved two bond measures totaling $135 million to fund affordable housing in Berkeley. Berkeley City Council subsequently began the development of an affordable housing framework (Housing for a Diverse, Equitable and Creative Berkeley) to guide Berkeley's affordable housing policies, programs, and projects through 2030.This framework explored wide array of affordable housing for artists and other creative workers. In July 2019, the Council referred this policy document to various Commissions for further development. However, the pandemic caused this work to be temporarily put on hold.

As elsewhere in the Bay Area, concerns around the arts ecosystem's affordability over the past decade are mostly anecdotal, arising when a major artist or arts organization imminently faces the loss of their living and work space. These stories, while important, inadequately inform systems change solutions aimed at addressing structural concerns.

To that end, this project's goal is to develop an assessment that provides systematic data around the unique housing and space needs of artists and cultural workers. This will better position the arts community to participate in Berkeley's ongoing affordable housing efforts and help improve art space safety in Berkeley without causing further displacement of artists. Two key questions guided this project from the beginning:

1) **What are the trends around local affordability issues that can be addressed through targeted resources and policy solutions?**
2) **What pre-existing disparities could impact possible affordable housing solutions for artists?**

This second question is key to ensure the solutions we suggest do not unintentionally impact some groups more than others.

In April 2020, the COVID-19 pandemic brought a pause to the assessment project and raised new affordability questions, as the arts community dealt with the consequences of regular lockdowns. While some local, state, and federal measures -- such as the eviction moratorium and extension of unemployment benefits to independent contractors -- helped prevent widespread displacement during the pandemic's height, the new normal brought new concerns as artists and cultural organizations continue to struggle with canceled events, lower venue capacity, and overall uncertainty.

These questions brought new urgency to the project, as well as the need to methodologically pivot and narrow the project's focus. Instead of focusing on both housing needs of artists and space needs of arts organizations as originally envisioned, this project focused on understanding the affordable housing and workspace needs of individual artists and cultural workers to ensure timely recommendations that would allow for participation in ongoing affordable housing efforts. This shift also allowed for the inclusion of additional questions that sought to understand both the short-term impact of the pandemic and the ongoing challenges that would inform long-term strategies to address affordability issues in Berkeley.

methodology and data limitations

In order to collect data directly from artists and cultural workers during the ongoing pandemic, an online survey was issued in September 2021 through the Berkeley Civic Arts Program. The survey was open for four weeks and was accompanied by a robust outreach strategy, including outreach and reminder emails through the Civic Arts Program's and City of Berkeley's mailing lists and social media channels, the direct networks of a number of arts organizations represented by members of an ad-hoc advisory group, and posting on other community-serving digital platforms like Nextdoor. A list of all survey questions is found in Appendix B.

In addition to quantitative data, this project relies on the insights of artists, cultural leaders, and the City's affordable housing experts to provide context to the affordability crisis and housing needs. Research staff conducted three focus group meetings with 21 community stakeholders, who formed an ad-hoc community advisory group.

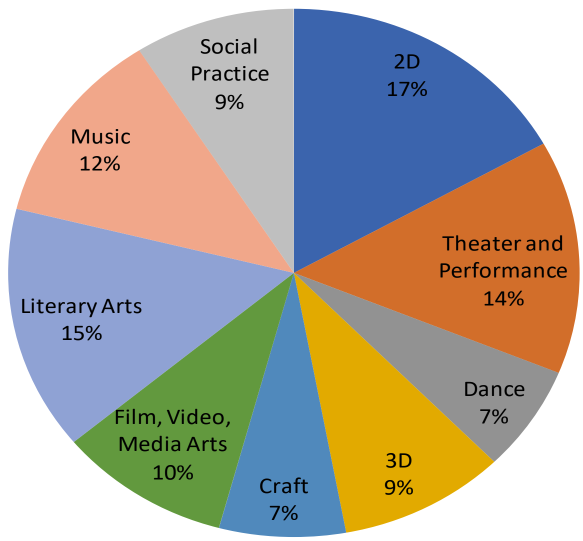
Members of the advisory group were selected to provide different perspectives on the historic and current landscape of arts and culture in Berkeley with a specific focus on housing needs for artists and cultural workers. With research staff, the advisory group helped design survey questions, reviewed preliminary findings, and brainstormed potential solutions. A list of the advisory group participants is provided in Appendix A.

Any survey of artists must contend with the fact that there is no baseline dataset regarding the number of artists in a given community, due to the various ways artists can be defined. The most common way to define a professional group is to use IRS data that classifies someone's profession based on the income they earn from their main profession. Artists' main sources of income, however, often do not come from artwork; income sources are diverse and cross-sectoral. The same can be said for cultural workers. Plus, an artist's level of engagement with an art practice is not limited to paid opportunities. Income is thus an inadequate defining criterion. Through this survey's grassroots and community-centered approach, this project provides a snapshot of the needs of the arts and culture sector and should be understood as baseline data that should be supplemented with ongoing and long-term data collection and analysis.

survey results

who responded?

A total of 163 artists and cultural workers responded to the survey. This constitutes 0.14% of Berkeley's population, based on data from the 2020 census. For comparison, in a similar study in 2015 in San Francisco, which involved a six-week survey and multiple in-person outreach events, 560 artists and cultural workers responded to the survey. That constituted 0.07% of San Francisco's population, based on 2010 census data. In other words, the Berkeley survey had double the response rate.



Of the Berkeley survey respondents, **48% identified as artists, 15% identified as cultural workers, and 37% identified as both artists and cultural workers**. In total, 32% of respondents do not currently reside in Berkeley, while 39% have lived in Berkeley for more than 10 years.

31%of respondents identified as LGBTQIA+

62%of respondents identified as female

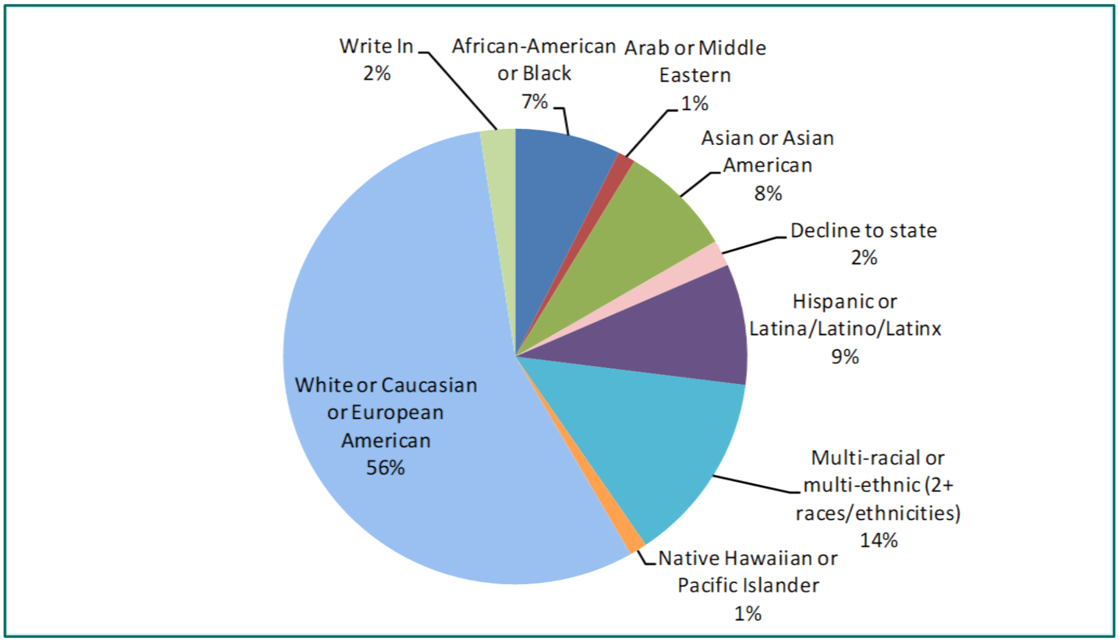


Figure 2: Race and ethnicity of survey respondents

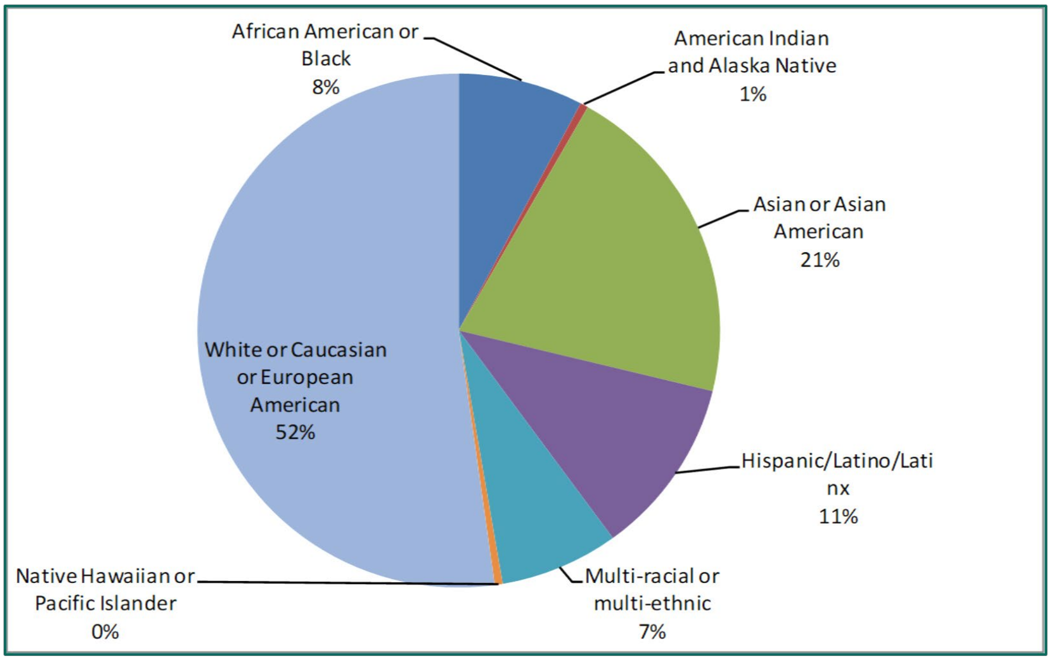


Figure 3: Race and ethnicity of City of Berkeley residents

key findings

Artist respondents are highly educated, yet have low income

Of those respondents who identified as artists or as both artists and cultural workers, 88% reported having a Bachelor's degree or higher. Of that same group, 60% reported an annual household income of $69,000 or less. According to the California Department of Housing and Community Development, in Alameda County for a single individual in 2019 (when this project and survey were first developed), annual household income of $26,050 or below constitutes extremely low income, between $26,051-$43,400 is defined as very low income, and between $43,401-$69,000 is defined as lower income. Per these categories, 60% of those who identified as artists or both artists and cultural workers have lower, very low, or extremely low income. In 2021, the upper threshold for the lower income category has risen to $76,750, meaning that artists are now even further behind financially than they were two years ago.

While low income is prevalent across the group, this rate is significantly higher among BIPOC respondents. Of respondents who identified as non-White, 72%, reported having lower, very low, or extremely low income, compared to 55% among those who identified as White or Caucasian. Due to the small number of participants, we are unable to make comparison between different groups who identify as non-White.

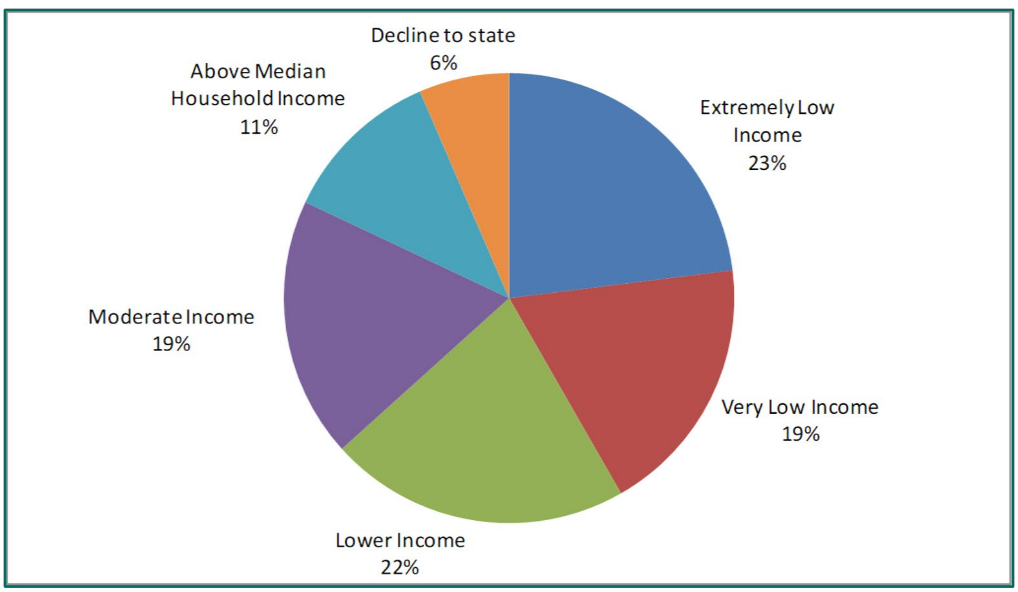


Figure 4a: Income categories for all artist respondents

Income Category	*Income Range*	*Percentage of Artist Respondents*
Extremely Low	≤ $26,050	21%
Very Low	$26,051-$43,400	16%
Low	$43,401-$69,000	23%

Median	$69,001-$78,200	17%
Moderate	$78,201-$93,850	18%
Decline to State	n/a	5%

Figure 4b: Income ranges for artist respondents

Artists and cultural workers have multiple forms of employment

Only 32% of all respondents reported that they are employed full-time. Others indicate that they engage in a patchwork of different types of part-time and short-term contract work, as well as self-employment, in order to make ends meet. Examples of employment that respondents are undertaking include: being a self-employed artist for one's own or another's art practice, being employed part time/doing regular work for pay as either a cultural worker or otherwise, doing contract work as a cultural worker or something other than a cultural worker, and undertaking unreported work for cash.

Artist respondents report being rent burdened, but are not immediately concerned with losing their housing

Among respondents who identify as artists and as both artists and cultural workers, 71% of respondents rent. Of those who rent, 77% are rent burdened or severely rent burdened. According to the US Department of Housing and Urban Development, a household or individual that spends more than 30% of their monthly household income on rent is rent burdened. Severely rent burdened households or individuals spend more than 50% of their monthly household income on rent.

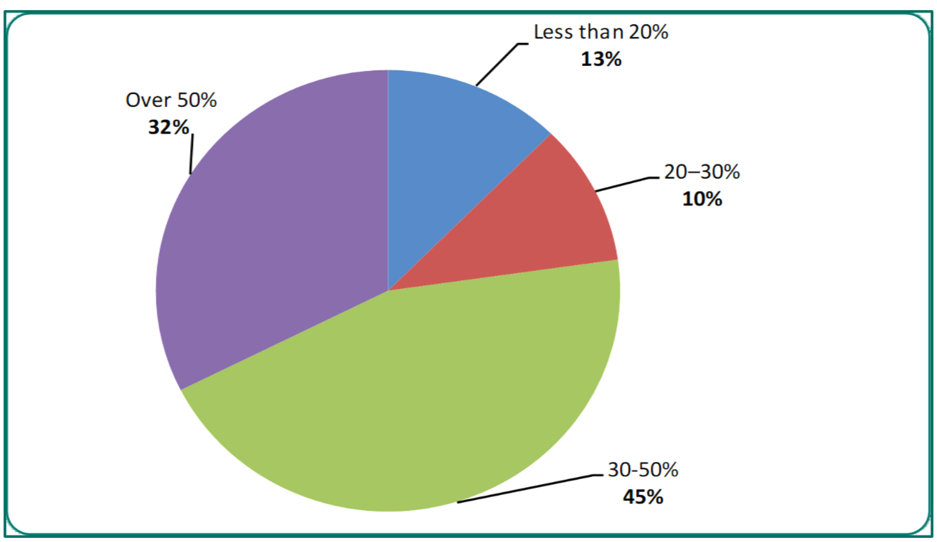


Figure 5: Respondents' percentage of monthly household income spent on rent

While studies have shown that rent burden and extremely low income decrease the health and overall wellbeing of all those impacted, for artists this burden can fundamentally change the way they engage with their artistic practice. Qualitative comments provided by the respondents highlighted having to scale back on their practice in order to earn the income they need to pay rent. This means they are unable to focus on developing their creative practice. As one respondent, a musician, explained:

> The cost of living in the Bay Area fundamentally changes how I am able to grow in my craft. Since we are all hustling to pay rent at this level, rehearsals must be paid, limited and without a "post gig hang" - something I find central to collaborating with others. This limits how much performing I can do with others, which limits how much I can grow, experiment and contribute in my craft.

Over the long term, the lack of opportunities for artists to devote time and energy to their practice can lead to the abandonment of artistic practice altogether.
Despite respondents' high rent burden and low income, those identifying as artists and as artists/cultural workers do not indicate concerns around losing their housing in the near future.

Only 9% of respondents reported that they were evicted due to no-fault causes in the last 2 years. No-fault eviction is defined as evictions that take place when leases are not renewed without the tenant having violated any regulations as long as a notice to move out is sent to the tenant within the required time period. Landlords might choose to evict tenants who are paying rent on time and complying with regulations due to owner move in or the need to retrofit a building. In the last decade, as the affordability crisis has intensified throughout the Bay Area, no-fault eviction has often been used to let go of long-term tenants who are protected from rent increases to bring in new tenants who are charged at market rate. In the survey issued to San Francisco artists, about 30% of respondents reported that their leases were not going to be renewed due to no fault of their own.

Only 6% of respondents had to rely on the eviction moratorium during the pandemic. In total, only 9% of respondents are uncertain or very uncertain that they will be able to retain housing after the moratorium ends (20% were neither certain nor uncertain). Though seemingly at odds with other findings, this sentiment could be attributed to three factors.

First, Berkeley has strong renter protection policies. Qualitative survey responses show that many respondents who rent are aware of and rely on rent control, which helps keep their rent affordable. This is especially true with respondents who have resided in Berkeley for more than five years. Not concerned with immediate loss of housing does not mean that existing housing needs are met, however. As one respondent explained:

> The only reason I am able to remain in the Bay Area is because I have been in the same unit for a decade and we have rent control - the other apartments in my building go for over twice what we're paying. […] If I ever wanted to leave this apartment (and I do), I would have to leave the area entirely, because I can't afford anything else.

The gap between existing housing and respondents' needs is especially acute for those working in artistic disciplines that have specific space requirements like extra ventilation.

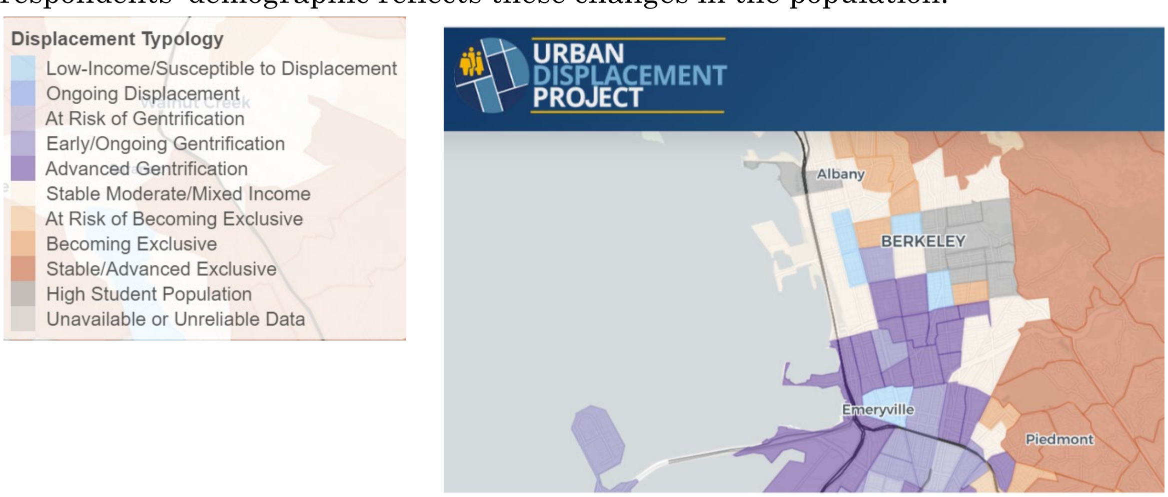
Second, the fact that the majority of respondents engage in multiple forms of employment means that they have multiple sources of income beyond their artistic practices to rely on for rental needs. However, as discussed above, in the long-term, the high burden of rent and reliance on other means of employment to make ends meet will impact artists' abilities to sustain their art. As one artist wrote:

> My housing is over 2/3 of my income, leaving little to nothing for anything over basic living expenses.

Lastly, the timing of the survey suggests that those who are currently still residing in Berkeley are the ones who managed to weather the wave of displacement that took place in the last decade through the two factors described above and we have not captured the concerns of those who already had to leave as displacement was taking place. According to the [Urban Displacement Project](), by 2018, almost all of Berkeley, except the immediate area surrounding University of California, Berkeley was experiencing ongoing and advanced gentrification, with a few areas already becoming exclusive and three areas in North Berkeley marked as low income and susceptible to displacement. South Berkeley area between Ashby Avenue and Emeryville border was in an advance gentrification stage with displacement having taken place between 2000 and 2018.

For comparison, the study in San Francisco took place in 2015, in the middle of the biggest wave of gentrification in the broader Bay Area. In that study, more than 1/3 of respondents expressed immediate concerns about loss of housing due to rent increase, end of lease term or fear of no-fault eviction.

Notably, South Berkeley also had high percentage of BIPOC population (between 50% and 70%). This data confirms that, like in the rest of the Bay Area, BIPOC communities are more susceptible to early displacement and the survey respondents' demographic reflects these changes in the population.



Artists have a unique need for flexible, live/work space

Of responding artists and artists/cultural workers, 82% reported that they make their art where they live, with 56% of this group requiring extra ventilation for their art.

This finding reflects the way that affordability challenges can fundamentally change an artist's practice. For artists needing extra ventilation, this could mean a choice between maintaining their own health and practicing their art, particularly if there is no adequate separation between where artists sleep, cook, and eat and where artworks are being stored, produced, or left to dry. The need for flexible and affordable live/work space has pushed artists to make choices to live in dangerous conditions that can have fatal consequences. As one artist respondent explained:

> It's really hard to find space to train that is affordable. I need at least 20' ceilings, ideally 30'. There were many affordable live/work warehouse conversions with this kind of ceiling height pre-Ghostship but many of these affordable spaces were affordable due to slumlord and very DIY situations, which often meant common housing needs like sealed roofs, consistent mail/package delivery, heating, bedroom windows/egress, were not guaranteed. The tragedy at Ghostship has led cities around the Bay Area to tighten up their policies around DIY spaces to prevent similar situations. However, without intentional creation of spaces that meet the needs of practicing artists, such policies do not solve the root cause problem that have caused artists to seek out those spaces in the first place.

recommendations

Create policies that prioritize artists for new affordable housing

Artists are an important part of the fabric of Berkeley as a city. As such, they should be part of ongoing conversations about Berkeley's housing plan. The survey results demonstrate that artists -- as a group -- have low income, a high rent burden, and have traditionally been left out of ongoing affordable housing. In order to mitigate further displacement and allow artists to continue to work and thrive in Berkeley, the City could consider creating a priority category for artists who meet income qualification to access affordable housing. Such a priority category would require working with the arts community to create an inclusive definition of what it means to be an artist. It should also take into consideration and center artists from Black, Indigenous, and People of Color (BIPOC) communities, as well as LGBTQ+ communities who have already been displaced. In doing so, artists will have an opportunity to return to Berkeley and enrich the city's social and artistic fabric.

Designate some of Berkeley's upcoming affordable housing funding from measure o for units specific to artists

On July 24, 2019, Berkeley's Civic Arts Commission approved an amendment recommendation for Measure O that called for "significantly increas[ing] the supply of affordable housing and live/work housing for artists, artisans, and cultural workers" through adding to the zoning ordinance, incentivizing developers to build market-rate housing that includes affordable live/work units for creative workers, and incorporate live/work spaces for artists and cultural workers into large-scale affordable housing projects. Other proposals included the development of a community land trust and transforming underused retail spaces and City-owned buildings into artist live/work spaces. These recommendations should be revisited and implemented, as they align with the range of qualitative responses that came through the survey. Respondents also suggesting the development of: 1) co-ops; 2) a separate affordable housing lottery specifically for those artists and cultural workers from BIPOC and other underserved communities; and 3) relationships between the City and land trusts to purchase buildings that serve as artist housing. These suggestions point to the importance of re-evaluating how zoning and other policies further disenfranchise artists and cultural workers.

Consult artists when designing new policies for live/work spaces

Across the Bay Area, responses to the Ghostship fire emphasized increased attention to artist DIY live/work spaces. These spaces were often the only options for artists to access live/work spaces that met their needs. Yet, artists have always worked to transform neighborhoods through their work and creative use of space. As Berkeley works to address affordability issues for all of its residents, consulting and involving artists in the planning process can help bring about a much-needed, new, and fresh perspective on issues such as rezoning, repurposing ground floor spaces, and requiring community benefit proposals for new development.

Develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline

Due to the nature of their work, artists often have a unique income structure that makes applying for affordable housing more difficult. In addition, the survey shows that artists have needs for certain types of spaces that might be difficult to identify. Funding technical assistance to support artists to translate their needs and apply for the existing affordable housing pipeline could be an important step in helping artists leave inadequate living situations. The advisory group also recommended creating a one-stop shop that features affordable housing for artists (perhaps akin to a specialized version of San Francisco's DAHLIA housing portal),which would create a platform where artists could share information about available housing and get connected to resources like financial technical assistance. A space geared towards artists' housing needs might be especially beneficial for artists who are looking for affinity housing along the lines of race and sexual identity, which allows them to stay more connected with their own communities.

Pilot a guaranteed basic income program for qualifying artists

Acknowledging the disproportionate impact of the pandemic on a community that was already struggling due to ongoing affordability challenges, multiple cities such as San Francisco and Minneapolis have launched pilot programs providing artists from marginalized communities who meet income requirements with a monthly stipend that would help cover their basic needs. Stipends are unrestricted, so they can be spent on rent and food while artists continue their artistic practice. Due to the existing racial wealth gap, which was reflected in the survey results, such a pilot should prioritize BIPOC artists. These types of programs are gaining national attention because the arts and culture are often cited as key strategies for economic recovery. Practicing artists are essential for such recovery. The advisory group agreed that a basic income program would address two key findings in this report -- respondents' extremely low income and high rent burden -- both of which have already forced artists to significantly modify or abandon their art practices.

further research

While the survey and focus groups discussed in this report have provided a much-needed snapshot into the space needs of artists in Berkeley, limited data does not allow us to paint a comprehensive picture. The following research and data collection is recommended, in order to complement this report.

Work with arts organizations to understand the income levels and housing needs of cultural workers

Only 15% of the respondents to the survey identified exclusively as cultural workers, meaning that there was not a statistically significant sample from which to draw conclusions about the needs of cultural workers. Further research, specifically on the housing needs and income levels of cultural workers, is needed.

Conduct a disparity study

Currently, Berkeley does not have comprehensive race and ethnicity data for seekers of affordable housing. Therefore, it is impossible to determine whether or not the artists who responded to this survey are demographically representative of the population that qualifies for affordable housing. A disparity study will ensure that changes in policy will not disproportionately impact certain groups.

Continue to collect data on artists

The lack of baseline data on artists -- even as simple as the total number of artists and disciplines practiced in a given community -- prevents us from understanding the extent of the issues that artists face. More long-term data collection and analysis of artists in Berkeley will allow the city to identify trends, as well as possible challenges that can be mitigated by timely policy changes.

appendices

a: community advisory group members

Kim Anno, Berkeley Civic Arts Commission
Delores Nochi Cooper, Berkeley Juneteenth Festival
Bruce Coughran, Indra's Net Theater
Hadley Dynak, Berkeley Cultural Trust
Misty Garrett, City of Berkeley
Ashlee George, Capoeira Arts Foundation and BrasArte
Mayumi Hamanaka, Kala Art Institute
Archana Horsting, Kala Art Institute
Mildred Howard, Independent Artist
Beatriz Leyva-Cutler, BAHIA
Amanda Montez, City of Berkeley
Mirah Moriarty & Rodrigo Esteva, Dance Monks
PC Muñoz, Freight & Salvage and BCT E&I Committee
Natalia Neira, La Pena Cultural Center and BCT E&I Committee
Daniel Nevers, Berkeley Art Center
Nancy Ng, Luna Dance Institute
Kathryn Reasoner, Vital Arts
Leigh Rondon, Shotgun Theater
Irene Sazer, Independent Artist (Civic Arts Grantee)
Sean Vaughn Scott, Black Repertory Group Theater
Rebecca Selin, Gamelan Sekar Jaya
Terry Taplin, Berkeley City Council and former Berkeley Civic Arts Commissioner
Rory Terrell, Local Artists Berkeley
Tyese Wortham, CAST
Chingchi Yu, Independent Artist (Civic Arts Grantee)

b: survey questions

Messaging

Are you an artist or cultural worker struggling to find affordable housing for you and your family?

Artists and cultural workers in Berkeley and throughout the Bay Area are facing an affordability crisis that prevents them from focusing on their creative work. Through the recently completed cultural planning process, the City of Berkeley identified as a primary goal the need to protect and increase access to affordable housing for artists and cultural workers.

Currently, there is little to no data on the affordable housing concerns of Berkeley artists and cultural workers. Your responses to this survey will help the City of Berkeley create programs and policies tailored to the housing needs that are specific to Berkeley's arts sector, including affordable housing and live-work spaces.

Thank you for helping keep Berkeley affordable for artists and cultural workers.

Survey Questions

1. Are you an artist or cultural worker?
    a. Artist [proceed to question 2]
    b. Cultural Worker (staff member at an arts culture organization) [Proceed to Question 4]
    c. Both

2. If you are an artist, how would you describe your artistic practice/artwork? Select all that apply:
    a. 2D (Painting, Printmaking, Drawing, Photography, etc.)
    b. 3D (Sculpture, Installation)
    c. Theater/Performance
    d. Dance
    e. Craft
    f. Film, Video, and/or Media Arts
    g. Literary (Creative Writing, Poetry, etc.)
    h. Music
    i. Social Practice
    j. Write in_____

3. Do you work with a medium that requires extra space and/or ventilation? This may include metal welding, spray paint, etc.
    a. Yes
    b. No

4. If you are a cultural worker, do you work at a Berkeley-based arts and culture nonprofit organization?
    a. Yes
    b. No

5. What is your primary language?
    a. English
    b. Spanish
    c. Chinese (Mandarin and Cantonese)
    d. Tagalog
    e. Vietnamese
    f. Persian
    g. Portuguese
    h. Punjabi
    i. Swahili
    j. Write In:______________________
    k. Decline to State

6. What is your race/ethnicity?
    a. African-American or Black
    b. American Indian or Alaska Native or Indigenous or First Nations
    c. Arab or Middle Eastern
    d. Asian or Asian American
    e. Hispanic or Latina/Latino/Latinx
    f. Native Hawaiian or Pacific Islander
    g. White or Caucasian or European American
    h. Multi-racial or multi- ethnic (2+ races/ethnicities)
    i. Write In__________________________________
    j. Decline to State

7. What best describes your gender identity?
    a. Female (cisgender)
    b. Female (transgender)
    c. Male (cisgender)
    d. Male (transgender)
    e. Gender-fluid/Genderqueer/Gender-expansive/Non-binary
    f. Write In_______________________
    g. Decline to State

8. How do you describe your sexual orientation or sexual identity?
    a. LGBTQ+
    b. Heterosexual/straight
    c. Write in_________________
    d. Decline to State

9. Do you identify as a person with a disability?

a. Yes
b. No

10. Please select the highest degree or level of school you have COMPLETED. If currently enrolled, mark the previous grade or highest degree already received.
  a. Less than high school
  b. High school diploma/GED
  c. Associate's degree
  d. Bachelor's degree
  e. Master's degree
  f. Doctorate degree

11. How many people live in your household, including yourself?
  a. One [Proceed to Question 14]
  b. Two
  c. Three
  d. Four
  e. Five
  f. More than five: Write In ___________________

12. Do you have any children under the age of 18?
  a. Yes
  b. No [Proceed to Question 14]

13. If yes, how many children currently live with you?
  a. One
  b. Two
  c. Three
  d. More than three
  e. Write in:______________________

14. What is your total household income?
  a. Less than $26,050
  b. $26,051-$43,400
  c. $43,401-$69,000
  d. $69,001-$98,549
  e. More than $98,550
  f. Decline to state

15. If you are an artist, do you make 50% or more of your income from your artistic practice?
  a. Yes
  b. No
  c. I don’t know
  d. I am not an artist

16. What is your current employment status? Check all that apply:
    a. Self employed artist for your own art practice
    b. Self-employed, but not for your own art practice
    c. Employed full time as a cultural worker
    d. Employed full time as something other than a cultural worker
    e. Employed part time/doing regular work for pay as a cultural worker
    f. Employed part time/doing regular work for pay as something other than a cultural worker
    g. Contract work as a cultural worker (for example: I receive a 1099 from a nonprofit arts organization organization)
    h. Contract work as something other than a cultural worker (for example: I receive a 1099 from a separate non-arts organization or business)
    i. Unreported work for cash
    j. Not employed

17. How easy is it to predict your total income from month to month?
    a. Very easy
    b. Moderately easy
    c. Neither easy nor difficult
    d. Moderately difficult
    e. Very difficult

18. How certain are you that your total income will return to pre-pandemic levels, over the next 6 months?
    a. Very certain
    b. Moderately certain
    c. Neither certain or uncertain
    d. Moderately uncertain
    e. Very uncertain

19. What percentage of your average monthly income do you spend on housing costs?
    a. Less than 20%
    b. 20%-30%
    c. 30%-40%
    d. 40%-50%
    e. More than 50%
    f. I don't know

20. What is the zip code where you work?

21. What is the zip code where you live?

22. How long have you lived in Berkeley?
    a. I do not live in Berkeley
    b. Less than a year

c. 1 - 3 years
d. 3 - 5 years
e. 5 - 10 years
f. More than 10 years
g. How long? ______________

23. How long do you expect to remain in Berkeley?
  a. I do not live in Berkeley
  b. Less than a year
  c. 1 - 3 years
  d. 3 - 5 years
  e. 5 - 10 years
  f. More than 10 years
  g. How long? ______________

24. Do you own or lease your living space?
  a. Lease [proceed to question 25]
  b. Own [proceed to question 28]

25. What is your lease term?
  a. Month to month
  b. 1 year
  c. 2-3 years
  d. More than 3 years

26. How many square feet is your space?

27. How much do you pay in rent per month?

28. Have you been displaced due to a “no-fault” or "no-cause" eviction in the past 2 years? (A “no-fault” or “no-cause” eviction is an eviction that is no fault of the tenant, but is allowed under the law.)
  a. Yes
  b. No
  c. I don't know

29. If you were displaced, did you have to move away from Berkeley?
  a. Yes
  b. No

30. If you were not displaced, did you have to rely on the eviction moratorium that Berkeley has implemented over the past 12 months?
  a. Yes
  b. No
  c. I didn’t know that evictions had been halted over the past 12 months.

31. How certain are you that you will be able to retain your housing when the eviction moratorium ends?
    a. Very certain
    b. Moderately certain
    c. Neither certain or uncertain
    d. Moderately uncertain
    e. Very uncertain

32. Do you use your living space for housing and your creative practice?
    a. Yes [proceed to question 37]
    b. No [proceed to question 32]

33. If you have a work space that is separate from your living space, do you own or lease your work space?
    a. Lease [proceed to question 34]
    b. Own [proceed to question 36]

34. What is the lease term for your work space?
    a. Month to month
    b. 1 year
    c. 2-3 years
    d. More than 3 years

35. How much do you pay in rent per month for your work space?
    Write in______________________________

36. How many square feet is your work space?
    Write In_________________________

37. Have you been displaced from your work space due to a "no-fault" or "no-cause" eviction in the past 2 years? (A "no-fault" or "no-cause" eviction is an eviction that is no fault of the tenant, but is allowed under the law.)
    a. Yes
    b. No
    c. I don't know

38. If you were displaced, did you have to move your work space away from Berkeley?
    a. Yes
    b. No

39. Do you share your work space?
    a. Yes
    b. No

40. What are some challenges you've faced in the past when trying to access or find affordable housing?

41. Please share any ideas you have on how to ensure equitable participation of BIPOC artists and cultural producers from other historically underserved communities, as well as recommendations for local organizations that should be consulted.

42. Do you have anything else to share with us?

-----------------END OF SURVEY---------------