



Office of the City Manager

CONSENT CALENDAR
May 21, 2013

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Jane Micallef, Director, Health, Housing & Community Services
Subject: Affordable Housing Mitigation Fee

RECOMMENDATION

Maintain the Affordable Housing Mitigation Fee as adopted in Ordinance 7,192-N.S. and Resolution 65,920-N.S. and amended by Resolution 66,015-N.S., with no additional exemptions.

FISCAL IMPACTS OF RECOMMENDATION

The staff recommendation is to make no change to the Affordable Housing Mitigation Fee, and therefore no fiscal impacts have been identified. Affordable Housing Mitigation Fees paid to the City will go to its Housing Trust Fund.

CURRENT SITUATION AND ITS EFFECTS

On October 16, 2012, City Council directed staff to “develop criteria for fee exemptions based on factors such as nonprofit status, cooperative structure, and allocation of housing to a minimum percentage of low income.” Staff have identified no further specific criteria of categories to exempt, other than those already exempted or not subject to the fee in the adopted Ordinance 7,192-N.S. and Resolution 65,920-N.S. Several exemptions for affordable housing have already been included, as well as a mechanism for waiving or reducing fees in the case of hardship or if other public benefits are provided by the project.

The fee is applicable only to new construction multifamily rental housing of five or more units. Therefore commercial buildings, condominiums, and buildings of up to four units would not be required to pay the fee. The ordinance also specifies:

- The fee requirement can also be satisfied by providing units affordable to low income tenants equal in number to ten percent of the market rate units in the project; and
- Developments meeting the Housing Trust Fund guidelines are exempt.

The Resolution additionally excludes:

- Cooperative student housing developed by the Berkeley Student Cooperatives;
- New rental housing built to replace rental housing destroyed through no fault of the owner, as long as a complete permit application is filed within two years; and
- Rehabilitated units unless the units were vacant for two or more years before the permit application.

The resolution also allows staff to waive or reduce the fees under BMC Sections 22.20.070 and 22.20.080. Section 22.20.080 allows for waiving or reducing fees if the applicant can demonstrate either that the fees would make the project infeasible, or that “the benefits to the City from the particular development project outweigh its burdens in terms of increased demand for affordable housing, child care and/or public facilities, adequate employment training and placement services and/or amenities and/or other impacts which reasonably may be anticipated to be generated by and/or attributable to the development project.” Any development project providing public benefits differing from those already contemplated and included in the Ordinance and Resolution could apply for a waiver or reduction of fees under Section 22.20.080.

Finally, Limited Equity Housing Cooperatives are a form of ownership housing and are addressed in the City’s Inclusionary Housing Ordinance, BMC Section 23C.12.070.

The Housing Advisory Commission reviewed the staff recommendation at its February 27, 2013 meeting and voted unanimously to support it.

BACKGROUND

On June 28, 2011, City Council adopted Ordinance No. 7,192-N.S. allowing for the creation of an Affordable Housing Mitigation Fee. On October 16, 2012, City Council adopted Resolution 65,920-N.S. setting the fee at \$28,000 per unit and establishing related terms of the fee.

On February 19, 2013 with Resolution 66,015-N.S., the Council reduced the fee by \$8,000 per unit for projects that submit applications prior to October 16, 2014 and which complete those applications and receive initial project approvals prior to October 16, 2016.

RATIONALE FOR RECOMMENDATION

The current fee requirements have numerous affordable housing exemptions, and allow for projects to request exemptions either because the fee would be a hardship or because the projects are providing other public benefits. Adding more general exemptions without a specific policy goal in mind could inadvertently create loopholes in the fee requirement.

ALTERNATIVE ACTIONS CONSIDERED

When Council adopted the Affordable Housing Mitigation Fee which included an exemption for cooperative student housing developed by the Berkeley Student Cooperatives, Council expressed interest in considering an exemption for other types of housing with certain social benefits. Staff reviewed the alternatives, including the possibility of creating an exemption for Limited Equity Housing Cooperatives (LEHC) since they share some characteristics of rental housing. However, LEHCs are already addressed in the Inclusionary Housing Ordinance (IHO). Staffs' concern is that while the City could adopt categorical exemptions for all nonprofit owned or cooperatively managed housing, these could create unintended loopholes in the fee requirement. However, in many if not most cases, these types of projects will fit an existing exemption or will involve rehabilitated housing that is not subject to the fee. If not, these projects could request a fee reduction or waiver under BMC Section 22.20.080. For this reason, staff recommends maintaining the current Affordable Housing Mitigation Fee with no changes.

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