



Office of the City Manager

PUBLIC HEARING
May 16, 2017

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Paul Buddenhagen, Director, Health, Housing & Community Services
 Subject: One-Time and Annual Monitoring Fees for Multi-Family Housing
 Developments Providing Below Market Rate Units Under BMC Chapter
 22.20.065 and Chapter 23C.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt a Resolution establishing a new monitoring fee of \$450 per BMR unit per year for existing and new multi-family housing developments providing BMR units and a new one-time fee of \$10,000 for new market rate housing development that will provide below-market rate (BMR) units in-lieu of paying the Affordable Housing Mitigation Fee.

FISCAL IMPACTS OF RECOMMENDATION

The City does not currently charge any fees associated with the cost of staffing the City's below market rate programs, the Inclusionary Housing Ordinance (BMC Chapter 23C.12) and the Affordable Housing Mitigation Fee (BMC Chapter 22.20.065). Currently General Funds pay for 0.33 FTE Community Development Project Coordinator time associated with monitoring the BMR program and 0.10 FTE Associate Planner associated with new BMR projects, as well as portions of a Senior Community Development Project Coordinator, the Manager of Housing and Community Services, and the Director of Health, Housing & Community Services.

If the fees are adopted, fee revenue would be used to hire an additional Community Development Project Coordinator dedicated to the BMR program, which accounts for the increase in program costs in the following table. General funds now supporting BMR monitoring staffing would support Housing Trust Fund monitoring, which requires more time than federal funds can support. Fees will be collected in account 249-8151-341-9905 and program costs will be expensed to account 249-8002-463-various.

FY 2017 program costs	\$149,790
Revenue generated by existing fees	\$0
FY 2018 proposed programs costs	\$288,807
Proposed New project fee (\$10,000 x assuming 5 projects)	\$50,000
Proposed monitoring fees (\$450 x 405 units)	\$182,250
Total proposed FY 2018 Fee Revenue	\$232,250

If the City receives the new project fee from more than five projects in the fiscal year, then fee revenue might exceed currently anticipated expenses. New project time comes primarily from the Associate Planner. If the number of projects exceeds five, a greater portion of the Associate Planner's time will be required, adding to the cost of providing the program. New projects paying the \$10,000 one-time fee would not be charged the annual monitoring fee until they have been occupied for a year.

CURRENT SITUATION AND ITS EFFECTS

Currently the City has a 0.33 FTE Community Development Project Coordinator assigned to monitoring approximately 400 rental units and 40 ownership units and 0.06 FTE Associate Planner is assigned to drafting and negotiating regulatory agreements for development projects providing below market rate (BMR) units. These positions are supported by portions of a Senior Community Development Project Coordinator, the Manager of Housing & Community Services and the Department Director.

Due to the increasing size of the BMR portfolio and volume of development taking place now, staff time for monitoring BMR units is no longer adequate to monitor the units appropriately. Health, Housing & Community Services has taken steps to reduce the staffing burden, such as ceasing approving the property management's income and rent calculations on an annual basis, moving compliance activities online through City Data Services, and making more information available online. Staff are proposing two new fees: a one-time fee for new projects and an annual monitoring fee for existing and new BMR units. The proposed fees would generate funds to pay for staffing both new projects and monitoring existing projects.

Annual Monitoring Fee

The proposed annual monitoring fee is \$450 per unit per year. The fee schedule also includes a 10% surcharge for fee payments over 30 days late, a 20% surcharge for fee payments over 60 days late, and a \$125 lien fee so that the City can lien properties that do not pay the fee. The surcharges and lien fee are based on fees for the Rental Housing Safety Program for its annual fee. If all projects pay on time, no late fees or lien fees will be assessed.

Santa Cruz, Santa Barbara, San Francisco and San Jose do not charge monitoring fees for BMR monitoring, although staff in San Jose indicated they are exploring this. Dublin,

Irvine, Santa Monica, and Emeryville charge fees for monitoring BMR units. Emeryville has a \$5,000 per project annual monitoring fee, but only charges it to projects where compliance is not readily forthcoming. Irvine charges just \$25/unit/year, Santa Monica has a table of rates up to \$181/unit/year and Dublin charges \$826/project/year.

As relatively new construction, BMR units are typically exempt from the Rent Stabilization Board registration fee of \$234 per unit per year. BMR units are also exempt from the 1.8% business license tax increase adopted in 2016 as Measure U1.

Housing & Community Services staff initially proposed a monitoring fee of \$600 per unit per year at the HAC's March 2, 2017 meeting. The Housing Advisory Commission did not support the staff fee proposal at \$600 per unit per year. Staff subsequently decided to reduce the fee to \$450 per unit per year, to respond to concerns about the amount of the fee, and to adjust the fee amount to cover the most immediate staffing needs.

One-Time Fee for New Projects

The proposed \$10,000 per new project fee would pay for HHCS staff time to administer the requirements of the Affordable Housing Mitigation Fee for new projects opting to provide below market rate (BMR) units in lieu of paying the mitigation fee. Currently the City has a 0.33 FTE Community Development Project Coordinator assigned to monitor approximately 400 rental units and 40 ownership units and work with developers and property managers on new projects. A total of 0.10 FTE Associate Planner is assigned to drafting and negotiating regulatory agreements for development projects providing below market rate (BMR) units. These positions are supported by portions of a Senior Community Development Project Coordinator, the Manager of Housing & Community Services and the Department Director.

Health, Housing & Community Services has taken steps to reduce the staffing burden, such as ceasing approving the property management's income and rent calculations on an annual basis, moving compliance activities online through City Data Services, and making more information available online. The proposed \$10,000 per new project fee and the proposed monitoring fees would together allow for the increase of staff time for the BMR program to have 1.0 FTE Community Development Project Coordinator working solely on this program.

Staff did not identify another city charging a one-time fee specifically for projects with new BMR units. Since administration of the BMR unit requirements are associated with land use planning approvals, it is possible that the staff time for the required tasks is incorporated into planning application fees. HHCS staff work on these projects is not reflected in the City's Planning fee schedule.

To calculate the cost of tasks associated with new projects, staff calculated the hourly rate for this program at \$102.64 per hour based on the following proposed staffing:

	FTE	1.0 FTE at Step C	with benefits	Program cost	Hours
Associate Planner	0.10	98,652.00	168,310.18	16,831.02	208.70
Community Development Project Coordinator	1.00	102,192.00	174,349.77	174,349.77	2087.00
Senior Community Development Project Coordinator	0.20	124,380.00	212,204.72	42,440.94	417.40
Manager of Housing and Community Services	0.03	139,728.00	238,389.94	7,151.70	62.61
Director of HHCS	0.01	206,460.00	352,241.41	3,522.41	20.87
Total HHCS BMR program	1.34			244,295.84	2796.58
Indirect costs				42,751.77	
annual cost of online training service (proposed)				1,760.00	
total cost of BMR program				\$288,807.62	\$102.64 per hour

Staff analyzed the tasks associated with new projects providing BMR units, described in more detail under **Background** below, and estimated the time associated with each of the tasks. Staff identified 26 hours of tasks associated with taking the project from the Use Permit to a recorded regulatory agreement, and 74 hours of tasks associated with working with the owner and property manager on the operational requirements and monitoring. A total of 100 hours of tasks at \$102.64 yields a cost of \$10,264. For administrative simplification for owners and the City, staff are proposing a fee of \$10,000.

The Housing Advisory Commission did not support the City's proposed fee schedule. At its March 2, 2017 meeting, the HAC made the following recommendations to Council on HHCS's proposed fees:

Action: M/S/C (Wolfe/Lord)

- to concur with staff's recommendation that fees be charged for BMR compliance, to express concern about the financial feasibility of new construction with a \$10,000 fee for new BMR projects to be imposed regardless of project size,
- to express concern about an annual fee of \$600 per unit per year for BMR monitoring,
- to recommend including hardship waiver language in the loan subordination fee,

- to recommend to staff to review options for streamlining compliance to increase the efficiency of the BMR program,
- to recommend that the Planning Department and Rent Stabilization Board be consulted with regard to Condominium Conversion program fees, and
- to recommend outreach to affected property owners.

Vote: Ayes: Crandall, Harrison, Johnson, Lord, Martinucci, Slaughter, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: None.

BACKGROUND

The annual monitoring fee of \$450 per unit per year will support HHCS's monitoring of the BMR units for compliance under existing and future BMR regulatory agreements. Under the Inclusionary Housing Ordinance, developers were required to provide below market rate (BMR) units, apartments renting for restricted prices to income-qualified tenants. Under the Affordable Housing Mitigation Fee ordinance, owners of new multifamily rental housing projects are required to pay a mitigation fee, and they are allowed the option of providing BMR units in lieu of the fee. City staff monitor the BMR units to ensure that they are made available to qualified households and operated consistent with program requirements.

City monitoring tasks include

- providing information and training to property managers regarding requirements,
- answering questions from owners, property managers, tenants and the general public about compliance,
- calculating and publishing annual rent and income limits,
- developing and maintaining an online records system,
- soliciting, tracking submission, and reviewing an annual report on compliance from owners,
- conducting on-site monitoring visits to review records and the condition of common areas,
- working with property owners to resolve instances of noncompliance, and
- tracking changes in property ownership and management.

The new project fee of \$10,000 will be charged one time to new multifamily housing developments providing below market rate units in-lieu of paying the City's Affordable Housing Mitigation Fee on new rental housing. The fee will be charged and collected at the time the project is required to enter into the housing regulatory agreement (either at building permit issuance or at certificate of occupancy, depending on the conditions in the Use Permit.)

The flat fee will cover Department of Health, Housing & Community Services staff time to

- review the project's use permit conditions,
- draft the regulatory agreement,

- determine and describe intersection with density bonus requirements in the regulatory agreement if applicable,
- address changes requested by the applicant,
- coordinate the execution and recording of the regulatory agreement,
- orient property management staff to program requirements,
- review and approve the marketing plan,
- monitor the tenant lottery process,
- review and approve the income documentation and rent and utility calculations for initial tenants,
- set up the monitoring program files online, and
- answer questions from the owner and property manager regarding all of the steps and requirements throughout.

The hourly staff time fee may be charged for projects requiring a greater than average amount of staff—for example, if the owner wants to amend a completed regulatory agreement or proposes unusual conditions which need to be evaluated. The hourly rate of \$100 was calculated by averaging HHCS working on the program. It is lower than the Planning hourly rate of \$180.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental effects directly associated with the adoption of fees.

RATIONALE FOR RECOMMENDATION

The City's portfolio of multi-family housing developments providing below-market rate units continues to grow. The portfolio grew by approximately 10% in the first nine months of FY2017 alone. Work on the BMR program can only be paid for by General Funds and fee revenue; this program is not eligible for federal funds. Fees would allow HHCS to hire a Community Development Project Coordinator assigned exclusively to the BMR program.

Unlike the Housing Trust Fund program, where most borrowers are mission-oriented nonprofits and projects are typically monitored by several other public funders in addition to the City, developments with BMR units are managed by property managers who may have no background in affordable housing programs and requirements, typically turn over very frequently and may receive little to no orientation from their employer on BMR requirements. Retaining BMR units as affordable housing for eligible households requires consistent City oversight, including regular on-site monitoring visits, and support for property managers.

ALTERNATIVE ACTIONS CONSIDERED

HHCS has taken steps to reduce the staff time required to monitor BMR units. For example, in the past property management prepared—then City staff reviewed and approved—every tenant income certification and rent calculation at move-in and each

annual lease renewal. This required carefully reviewing pay stubs, tax returns, and pay stubs for around 400 households per year, and became infeasible for the 0.5 FTE dedicated to monitor the BMR program. Starting in 2017, HHCS only reviews tenant income and rent calculations at the project's initial occupancy. Property managers must report incomes and rents online annually, and staff review the documentation during on-site monitoring visits. Staff hope to complete on-site visits more than every three years as was the goal in the past; the number of site visits depends on staffing levels.

Staff also moved compliance activities online into City Data Services which has helped centralize documentation and automate certain portions of monitoring. This completely custom system has also required significant staff efforts to develop.

Without an increase in BMR monitoring staffing, HHCS will need to find additional ways to streamline BMR monitoring for fit within the available resources.

Unlike with monitoring, it not possible to decrease staff time spent on the set-up for new projects. This typically involves interaction with project sponsors that spans over years from the time before they apply for a use permit through the entitlements process and to execution of a regulatory agreement and lease up. Currently, there is no correlation between the volume of new projects and the resources available for staffing, so work on new projects competes directly with ongoing monitoring. Without an increase in BMR monitoring staffing, HHCS will need to find additional ways to streamline BMR monitoring for fit within the available resources in order to maintain capacity for new projects.

CONTACT PERSON

Amy Davidson, Senior Community Development Project Coordinator, Health, Housing & Community Services, (510) 981-5406

Attachments:

1: Resolution

Exhibit A: New Below Market Rate Program Annual Monitoring Fee Schedule

RESOLUTION NO. ##,###-N.S.

ADOPTING NEW ONE-TIME AND ANNUAL MONITORING FEES FOR BELOW MARKET RATE RENTAL HOUSING UNITS PROVIDED UNDER BMC CHAPTER 23C.12 AND BMC CHAPTER 22.20.065

WHEREAS, the City's Inclusionary Housing Ordinance (BMC Chapter 23C.12) required and the Affordable Housing Mitigation Fee (BMC Chapter 22.20.065) allows developers of market rate multi-family housing to provide below market rate (BMR) apartments; and

WHEREAS, the Inclusionary Housing Ordinance in BMC Chapter 23C.12.100 allows the City Council to adopt by resolution fees to administer its requirements; and

WHEREAS, the Affordable Housing Mitigation Fee in BMC Chapter 22.20.065 Section E allows the City Council to adopt by resolution fees to administer its requirements; and

WHEREAS, staff recommend the adoption of fees to support monitoring BMR units.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City adopts the fee schedule attached as Exhibit A.

Exhibits

A: Below Market Rate Program Fees

May 16, 2017

Exhibit A: New Below Market Rate Program Fee Schedule

Annual Monitoring Fees for Below Market Rate Units Created Under BMC 23C.12 and BMC 22.20.065	Amount
Annual monitoring fee	\$450 per BMR unit
10% surcharge for 30 day late fees	10%
20% surcharge for 60 day late fees	20%
Administrative lien fee	\$125 per lien

One Time Fees for Projects Opting to Provide Below Market Rate Units In-Lieu of Paying the Affordable Housing Mitigation Fee (BMC 22.20.065)	Amount
Set-up fee	\$10,000
Hourly charge for additional staff time	\$100

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**ESTABLISHING ONE-TIME AND ANNUAL MONITORING FEES FOR
MULTI-FAMILY HOUSING DEVELOPMENTS PROVIDING BELOW
MARKET RATE UNITS UNDER BMC CHAPTER 22.20.065 AND
CHAPTER 23C.12**

Notice is hereby given by the City Council of the City of Berkeley that a public hearing will be conducted by said city council of the City of Berkeley at which time and place all persons may attend and be heard upon the following:

The Department of Health, Housing & Community Services is proposing the adoption of a new one-time fee to support related staff time for developments providing below market rate units in lieu of paying the Affordable Housing Mitigation Fee. The new fee would not apply to the Housing Trust Fund program.

Current Fees

\$0

Proposed Fees

see tables below

Annual Monitoring Fees for Below Market Rate Units Created Under BMC 23C.12 and BMC 22.20.065	Amount
Annual monitoring fee	\$450 per BMR unit
10% surcharge for 30 day late fees	10%
20% surcharge for 60 day late fees	20%
Administrative lien fee	\$125 per lien

One Time Fees for Projects Opting to Provide Below Market Rate Units In-Lieu of Paying the Affordable Housing Mitigation Fee (BMC 22.20.065)	Amount
Set-up fee	\$10,000
Hourly charge for additional staff time	\$100

The hearing will be held on May 16, 2017, at 7:00 p.m. in the City Council Chambers, 2134 Martin Luther King, Jr. Way.

For further information, please contact Amy Davidson at (510) 981-5406.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **May 4, 2017**.

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

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

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 12 days prior to the public hearing.

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on May 4, 2017.

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Mark Numainville, City Clerk

