REVISED AGENDA MATERIAL

Meeting Date:       June 27, 2017
Item Number:       38
Item Description:  Expedited Review for Affordable Housing Projects
Submitted by:      Councilmember Sophie Hahn

Removing recommendation 1, and changing the threshold for immediate priority status and expedited review to projects that contain 80% or more affordable housing units. We also removed Attachment 1, BMC Chapter 22.20.
To:         Honorable Mayor and Members of the City Council  
From:    Councilmember Sophie Hahn, Cheryl Davila, and Ben Bartlett, and Kate Harrison 
Subject: Expedited Review for Affordable Housing Projects 

RECOMMENDATION 
1. Refer to the City Manager the creation of an expedited review process for housing projects in which Affordable Housing units make up more than 20% of the proposed on-site units; and 
1. Direct the City Manager to immediately confer priority status and offer expedited review to 100% Affordable projects with 80% or more affordable housing, pending adoption of a more formal and widely applicable expedited review process. 

FINANCIAL IMPLICATIONS 
Staff time 

BACKGROUND 
Cities throughout the Bay Area, including Berkeley, suffer from a lack of affordable housing development. Over the past two decades, rents have skyrocketed, and many low- and middle-income families have been forced out of Berkeley, due to lack of affordability. Alleviating this crisis is one of Berkeley’s top priorities, and all possible steps must be taken to support increases in Berkeley’s affordable housing stock. 

In 2016, the Berkeley City Council determined that development projects could provide a number of units equal to 20% of the project’s proposed market rate units at specified levels of affordability, in lieu of paying the City’s Affordable Housing Mitigation Fee (see Attachment 1, BMC 22.20). Expedited review of projects offering more than 20% affordable housing built on site (from 21-100% of units) will help not-for-profit affordable housing developers move projects forward in an expeditious manner and reward for-profit developers who go above and beyond the city’s baseline inclusionary Affordable Housing requirement. 

All projects with greater than 20% affordable housing shall be subject to the expedited review process, receiving priority review and meeting explicit accelerated timelines. Among projects qualifying for expedited review, those offering the greatest absolute number of affordable housing units (cumulative units at extremely low, very low, low, and moderate income levels),
and/or projects with restricted timelines to seek public or private affordable housing funds, will receive the highest priority.

In the past, the City of Berkeley has developed expedited entitlement processes for development projects that are in line with key priorities. Specifically, the Downtown Plan includes “Green Pathway” provisions, with a streamlined permit process for buildings that exceed certain requirements in the C-DMU Area (see Attachment 12: Green Pathway Ordinance, BMC Chapter 23B.34).

Creating an expedited process for projects with significant affordable housing will help spur additional development of much-needed Affordable Housing, ease the permitting process for developments whose projects are closely aligned with the City’s top development priority, and incentivize the inclusion of Affordable Housing above and beyond the legally mandated amount of affordable housing projects. An expedited review process will also support not-for-profit developers in meeting timelines to obtain scarce and impactful affordable housing funds.

In the interim, while the City Manager develops a formal process for expedited review of all projects with more than 20% Affordable units on site, all projects with 40%-80% or more Affordable Housing shall receive top priority status and accelerated processing and review, to the greatest extent possible.

ENVIRONMENTAL SUSTAINABILITY
This recommendation is consistent with Berkeley’s environmental sustainability goals.

CONTACT PERSON
Councilmember Sophie Hahn Council District 5 (510) 981-7150

ATTACHMENTS
1. BMC Chapter 22.20, Mitigation and Fees, Condition for Approval of Development Projects
2. BMC Chapter 23B.34, Green Pathway
To:         Honorable Mayor and Members of the City Council  
From:    Councilmember Sophie Hahn, Cheryl Davila, Ben Bartlett, and Kate Harrison  
Subject: Expedited Review for Affordable Housing Projects  

RECOMMENDATION  
1. Direct the City Manager to immediately confer priority status and offer expedited review to projects with 80% or more affordable housing  

FINANCIAL IMPLICATIONS  
Staff time  

BACKGROUND  
Cities throughout the Bay Area, including Berkeley, suffer from a lack of affordable housing development. Over the past two decades, rents have skyrocketed, and many low- and middle-income families have been forced out of Berkeley, due to lack of affordability. Alleviating this crisis is one of Berkeley’s top priorities, and all possible steps must be taken to support increases in Berkeley’s affordable housing stock.  

In the past, the City of Berkeley has developed expedited entitlement processes for development projects that are in line with key priorities. Specifically, the Downtown Plan includes “Green Pathway” provisions, with a streamlined permit process for buildings that exceed certain requirements in the C-DMU Area (see Attachment 1: Green Pathway Ordinance, BMC Chapter 23B.34).  

Creating an expedited process for projects with significant affordable housing will help spur additional development of much-needed Affordable Housing, ease the permitting process for developments whose projects are closely aligned with the City’s top development priority, and incentivize the development of affordable housing projects. An expedited review process will also support not-for-profit developers in meeting timelines to obtain scarce and impactful funds.  

To that end, all projects with 80% or more Affordable Housing shall receive top priority status and accelerated processing and review.  

ENVIRONMENTAL SUSTAINABILITY  
This recommendation is consistent with Berkeley’s environmental sustainability goals.
CONTACT PERSON
Councilmember Sophie Hahn Council District 5 (510) 981-7150

ATTACHMENTS
1. BMC Chapter 23B.34, Green Pathway
REVISED
AGENDA MATERIAL

Meeting Date:       June 27, 2017

Item Number:       38

Item Description:  Expedited Review for Affordable Housing Projects

Submitted by:      Councilmember Sophie Hahn

Adding Councilmember Harrison as a co-sponsor
To: Honorable Mayor and Members of the City Council

From: Councilmember Sophie Hahn, Cheryl Davila, and Ben Bartlett, and Kate Harrison

Subject: Expedited Review for Affordable Housing Projects

RECOMMENDATION
1. Refer to the City Manager the creation of an expedited review process for housing projects in which Affordable Housing units make up more than 20% of the proposed on-site units; and
2. Direct the City Manager to immediately confer priority status and offer expedited review to 100% Affordable projects, pending adoption of a more formal and widely applicable expedited review process.

FINANCIAL IMPLICATIONS
Staff time

BACKGROUND
Cities throughout the Bay Area, including Berkeley, suffer from a lack of affordable housing development. Over the past two decades, rents have skyrocketed, and many low- and middle-income families have been forced out of Berkeley, due to lack of affordability. Alleviating this crisis is one of Berkeley’s top priorities, and all possible steps must be taken to support increases in Berkeley’s affordable housing stock.

In 2016, the Berkeley City Council determined that development projects could provide a number of units equal to 20% of the project’s proposed market rate units at specified levels of affordability, in lieu of paying the City’s Affordable Housing Mitigation Fee (see Attachment 1, BMC 22.20). Expedited review of projects offering more than 20% affordable housing built on site (from 21-100% of units) will help not-for-profit affordable housing developers move projects forward in an expeditious manner and reward for-profit developers who go above and beyond the city’s baseline inclusionary Affordable Housing requirement.

All projects with greater than 20% affordable housing shall be subject to the expedited review process, receiving priority review and meeting explicit accelerated timelines. Among projects qualifying for expedited review, those offering the greatest absolute number of affordable housing units (cumulative units at extremely low, very low, low, and moderate income levels),
and/or projects with restricted timelines to seek public or private affordable housing funds, will receive the highest priority.

In the past, the City of Berkeley has developed expedited entitlement processes for development projects that are in line with key priorities. Specifically, the Downtown Plan includes “Green Pathway” provisions, with a streamlined permit process for buildings that exceed certain requirements in the C-DMU Area (see Attachment 2: Green Pathway Ordinance, BMC Chapter 23B.34).

Creating an expedited process for projects with significant affordable housing will help spur additional development of much-needed Affordable Housing, ease the permitting process for developments whose projects are closely aligned with the City’s top development priority, and incentivize the inclusion of Affordable Housing above and beyond the legally mandated amount. An expedited review process will also support not-for-profit developers in meeting timelines to obtain scarce and impactful affordable housing funds.

In the interim, while the City Manager develops a formal process for expedited review of all projects with more than 20% Affordable units on site, all projects with 100% Affordable Housing shall receive top priority status and accelerated processing and review, to the greatest extent possible.

ENVIRONMENTAL SUSTAINABILITY
This recommendation is consistent with Berkeley’s environmental sustainability goals.

CONTACT PERSON
Councilmember Sophie Hahn Council District 5 (510) 981-7150

ATTACHMENTS
1. BMC Chapter 22.20, Mitigation and Fees, Condition for Approval of Development Projects
2. BMC Chapter 23B.34, Green Pathway
To: Honorable Mayor and Members of the City Council

From: Councilmembers Sophie Hahn, Cheryl Davila, and Ben Bartlett

Subject: Expedited Review for Affordable Housing Projects

RECOMMENDATION
1. Refer to the City Manager the creation of an expedited review process for housing projects in which Affordable Housing units make up more than 20% of the proposed on-site units; and
2. Direct the City Manager to immediately confer priority status and offer expedited review to 100% Affordable projects, pending adoption of a more formal and widely applicable expedited review process.

FINANCIAL IMPLICATIONS
Staff time

BACKGROUND
Cities throughout the Bay Area, including Berkeley, suffer from a lack of affordable housing development. Over the past two decades, rents have skyrocketed, and many low- and middle-income families have been forced out of Berkeley, due to lack of affordability. Alleviating this crisis is one of Berkeley’s top priorities, and all possible steps must be taken to support increases in Berkeley’s affordable housing stock.

In 2016, the Berkeley City Council determined that development projects could provide a number of units equal to 20% of the project’s proposed market rate units at specified levels of affordability, in lieu of paying the City’s Affordable Housing Mitigation Fee (see Attachment 1, BMC 22.20). Expedited review of projects offering more than 20% affordable housing built on site (from 21-100% of units) will help not-for-profit affordable housing developers move projects forward in an expeditious manner and reward for-profit developers who go above and beyond the city’s baseline inclusionary Affordable Housing requirement.

All projects with greater than 20% affordable housing shall be subject to the expedited review process, receiving priority review and meeting explicit accelerated timelines. Among projects qualifying for expedited review, those offering the greatest absolute number of affordable housing units (cumulative units at extremely low, very low, low, and moderate income levels), and/or projects with restricted timelines to seek public or private affordable housing funds, will receive the highest priority.
In the past, the City of Berkeley has developed expedited entitlement processes for development projects that are in line with key priorities. Specifically, the Downtown Plan includes “Green Pathway” provisions, with a streamlined permit process for buildings that exceed certain requirements in the C-DMU Area (see Attachment 2: Green Pathway Ordinance, BMC Chapter 23B.34).

Creating an expedited process for projects with significant affordable housing will help spur additional development of much-needed Affordable Housing, ease the permitting process for developments whose projects are closely aligned with the City’s top development priority, and incentivize the inclusion of Affordable Housing above and beyond the legally mandated amount. An expedited review process will also support not-for-profit developers in meeting timelines to obtain scarce and impactful affordable housing funds.

In the interim, while the City Manager develops a formal process for expedited review of all projects with more than 20% Affordable units on site, all projects with 100% Affordable Housing shall receive top priority status and accelerated processing and review, to the greatest extent possible.

ENVIRONMENTAL SUSTAINABILITY
This recommendation is consistent with Berkeley’s environmental sustainability goals.

CONTACT PERSON
Councilmember Sophie Hahn, Council District 5, (510) 981-7150

ATTACHMENTS
1. BMC Chapter 22.20, Mitigation and Fees, Condition for Approval of Development Projects
2. BMC Chapter 23B.34, Green Pathway
Chapter 22.20
MITIGATION AND FEES--CONDITIONS FOR APPROVAL OF DEVELOPMENT PROJECTS

Sections:
22.20.010 Applicability of chapter.
22.20.020 Findings.
22.20.030 Purpose.
22.20.040 Definitions.
22.20.050 Designated implementing authority.
22.20.060 Requirements.
22.20.065 Affordable housing mitigation fee.
22.20.070 Exception/limit where applicant establishes inapplicability or unconstitutionality of general requirements.
22.20.080 Exception--Hardship.
22.20.090 Procedure.
22.20.100 Appeal.
22.20.110 Mitigation rationale.

22.20.010 Applicability of chapter.

The regulations, requirements and provisions of this chapter and council resolutions adopted pursuant hereto shall apply to any development project. (Ord. 6179-NS § 1, 1993)

22.20.020 Findings.

A. There is a shortage of affordable housing, licensable space for child care services and affordable child care and public facilities, adequate employment training and placement services and amenities within the City of Berkeley;

B. Persons who live and/or work in the City have serious difficulty locating housing, child care and public facilities, adequate employment training and placement services and amenities at prices they can afford;

C. Local revenues, as supplemented by federal and state sources, do not provide an adequate source of funding to meet local needs for housing, child care and public facilities, adequate employment training and placement services and amenities;
D. Certain development projects create an influx of new employees and their families to the City, and thus generate additional need for affordable housing, child care and public facilities, adequate employment training and placement services and amenities;

E. Many potential employees are unable to accept moderately-paying jobs because of a lack of childcare facilities or the cost of obtaining adequate child care. This, in turn, results in increased social and economic costs to the City;

F. In addition, such development projects create individual and cumulative impacts, including changes in, and in many cases deterioration of, the visual environment; an increase in noise, air and water pollution levels; new and increased traffic and parking impacts; power, sewer and other utility demand and consumption; loss of valuable open space; and increased demands on parks, schools, libraries, police, fire and public facilities, services and amenities;

G. The increased demand for affordable housing, child care and public services, adequate employment training and placement facilities and amenities, and the other impacts generated by development projects, unless mitigated, are detrimental to the City’s public health, safety and general welfare;

H. The public policy of the City of Berkeley, as reflected by the City’s master plan and housing element, is (1) to make an adequate supply of housing available to all economic segments of the community, (2) to provide adequate municipal services and facilities, and (3) to control the design and operation of development projects to insure their compatibility within adjacent residential areas. (Ord. 6179-NS § 2, 1993)

22.20.030 Purpose.

The purpose of this chapter is to assure that development projects mitigate and/or compensate for the increased demand for affordable housing, child care and public services, adequate employment training and placement facilities and amenities and other impacts attributable to and generated by such development projects within the City of Berkeley. (Ord. 6179-NS § 3, 1993)

22.20.040 Definitions.

A. "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 development.
B. "Benefits" shall include, but not be limited to, any of the following: increased tax revenues; new local employment opportunities; development of desirable public amenities and/or services; potential attraction of additional commercial development; potential stimulation of commercial activity.

C. "Development project" means any activity involving or requiring the issuance by the City of Berkeley to a person or entity of a use permit, variance, building permit, subdivision approval (including tentative, final and parcel maps), license, certificate or other entitlement of any kind.

D. "Infeasible" means incapable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.

E. "Mitigate" and "mitigation" means any of the following:

1. Minimizing impacts by limiting the degree or magnitude of a proposed development project;

2. Rectifying the impact by repairing, rehabilitating or restoring the impacted area or environment;

3. Reducing or eliminating the impact over time by ongoing programs, preservation, maintenance and/or other operations;

4. Compensating for the impact by paying a fee and/or providing replacement and/or substitute resources, facilities, services and/or environments. (Ord. 6179-NS § 4, 1993)

22.20.050 Designated implementing authority.

A. The City Manager shall be the designated authority to develop and implement rules and regulations pertaining to this chapter, and shall have the authority to take any actions he or she may deem necessary and/or appropriate to work and/or negotiate with applicants to advance the purposes of this chapter.

B. The Planning Commission, Zoning Adjustments Board and City Council shall have the authority to impose those mitigation and/or fees authorized by this chapter as conditions of discretionary subdivision approvals, use permits and/or variances.

C. The City shall have the authority to impose administratively those mitigations and/or fees required by this chapter as conditions of permits and entitlements which are not subject to discretionary review by the Planning Commission, Zoning Adjustments Board and/or City Council, including administrative use permits, zoning permits and building permits. (Ord. 6179-NS § 5, 1993)
22.20.060 Requirements.

A. The applicant of any development project, for which any permit, variance, approval or entitlement of any kind is required by the City, as a condition of such permit, variance and/or other entitlement, shall provide and/or pay to the City those mitigation and/or fees necessary to eliminate, mitigate and/or reduce to an acceptable level those impacts and/or increased demand for affordable housing, child care and/or public services, adequate employment training and placement facilities and amenities which are anticipated to be generated by and/or attributable to such development project as established by resolution of the City Council or as otherwise imposed administratively by the City, or by the Planning Commission, Zoning Adjustments Board, or City Council.

B. Nothing in this chapter shall be construed as requiring the City to grant any individual permit, variance, approval and/or other entitlement of any kind for which the applicant proposes or agrees to provide mitigation and/or fees under this chapter.

C. The mitigation and/or fees authorized by this chapter are in addition to any otherwise authorized by law.

(Ord. 6179-NS § 6, 1993)

22.20.065 Affordable housing mitigation fee.

A. Findings and purpose.

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

2. In 1990, the City established the Housing Trust Fund to pool available funding for affordable housing development. The majority of resources in the Housing Trust Fund have been from federal sources, although state and local sources have been significant as well. Since 1990, the City has provided Housing Trust Funds to affordable housing developments throughout the City, and has revised the Housing Trust Fund Guidelines a number of times, most recently in 2009, to reflect changing market conditions and City priorities.
3. While Housing Trust Funds are a significant source of support for affordable housing developments within the City, Housing Trust Funds alone are not sufficient to cover the costs of providing affordable housing today. Each development must leverage multiple federal and state sources of funding to be financially feasible. Even then, the housing produced is not sufficient to meet local needs for housing for lower income households, as documented in the Housing Element, the Everyone Home Plan adopted in 2006, and the 2010 Consolidated Plan.

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

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

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

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

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

9. New market-rate rental housing, including Density Bonus Units, contributes to the demand for goods and services in the City, increasing local service employment at wage levels which often do not permit employees to afford housing in the City. The "Affordable Housing Fee Nexus Study," dated June 2010 (the "Nexus Study"), prepared by Bay Area Economics, quantifies the impacts of new market-rate rental units on the need for affordable housing in the City.
10. The study estimated the additional spending attributable to each new housing unit in the City, then translated this spending into jobs at a range of income levels. The study estimated the number of households the job-holders would make up, and their household incomes. The City relied on this study to set a fee of $28,000 in 2012.

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

B. Definitions.

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

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

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

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

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

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

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

8. "Very Low-Income Unit" means any dwelling unit that is rented, for the life of the Development project in which it is located, at a price affordable to a Very Low-Income Household of an appropriate size for the dwelling unit, and restricted to households with an income not exceeding 50% of AMI.
9. For purposes of this Section, affordable rents shall be determined in accordance with the provisions of Health and Safety Code section 50105, 50052.5(b)(2), and 50052.5(h), and California Code of Regulations Chapter 25 Section 6918.

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

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

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

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

2. An applicant for a Development project that is subject to the Fee may elect to avoid the Fee by providing, for the life of the project, a number of units equal to 20% of the market rate units in the project at rental rates affordable to Low-Income and Very Low-Income Households. Subject to administrative regulations promulgated pursuant to subdivision H, 40% of the Very Low-Income units in Development projects that have not obtained final approval under Title 23 as of September 20, 2016, shall be reserved for holders of Berkeley Housing Authority Section 8 vouchers and 40% shall be reserved for holders of City of Berkeley Shelter + Care certificates.

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

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

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

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

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

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

Where:

A = Total number of units in the project

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

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

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

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

G. Consistent with Government Code 66000, this Section will be revisited every 5 years to confirm whether the purpose, the nexus, and the amount of the fee are still valid.
H. Administrative Regulations. The City Manager or his/her designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross rents, requiring guarantees, entering into and recording agreements with applicants and taking other appropriate steps necessary to assure that the required Low Income and Very Low Income Units are provided and occupied by Very Low Income and Low Income Households. (Ord. 7534-NS § 1, 2017; Ord. 7506-NS § 1, 2016; Ord. 7499-NS § 1, 2016; Ord. 7192-NS § 1, 2011)

22.20.070 Exception/limit where applicant establishes inapplicability or unconstitutionality of general requirements.

A. Notwithstanding any other provision of this chapter, the requirements of this chapter shall not apply or shall be limited as follows:

1. No mitigation and/or fees shall be imposed on any applicant or development project where the applicant establishes to the City’s satisfaction that the proposed development project will not generate any additional need for affordable housing, child care and/or public facilities, adequate employment training and placement services or amenities or any other impact for which a mitigation and/or fee is otherwise required;

2. The amount and/or level of any mitigation and/or fee under this chapter shall not exceed the reasonable cost of either satisfying the additional demand for affordable housing, child care and/or public facilities, adequate employment training and placement services or amenities or of eliminating and/or reducing to an acceptable level any other impact which reasonably may be anticipated to be generated by or attributed to any individual development project;

3. The City shall not condition any permit in any manner which results in a deprivation of the applicant’s constitutional rights.

B. The burden of establishing by satisfactory factual proof the applicability and elements of subsections (A)(1), (A)(2) and (A)(3) of this section shall be on the applicant

C. No exemption or limit shall be granted pursuant to this section unless a finding is made, based on satisfactory factual proof provided by the applicant, that at least one of the requirements set forth in subsection (A)(1), (A)(2) or (A)(3) of this section has been satisfied. (Ord. 6179-NS § 7, 1993)

22.20.080 Exception--Hardship.
A. Notwithstanding any other provision of this chapter, the requirements of this chapter in the discretion of the City may be waived or limited for a particular development project where both of the following findings are made:

1. The imposition of the mitigation and/or fees otherwise required by the City make the development of the particular project infeasible; and

2. 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.

B. The burden of establishing by satisfactory factual proof the applicability and elements contained in subsections (A)(1) and (A)(2) of this section shall be on the applicant. (Ord. 6179-NS § 8, 1993)

22.20.090 Procedure.

A. Upon receipt of any application for a permit, approval and/or other entitlement subject to the provisions of this chapter, the City shall review the application, obtain information and take any other steps it deems necessary to determine whether and to what extent the proposed development project will generate and/or result in impacts which require mitigation pursuant to this chapter. The City shall calculate, according to formulae and rationales to be maintained and provided upon request to the applicant, the amount of mitigation and/or fees required to be provided by the applicant to offset and/or mitigate the impacts of the proposed development project.

B. For those proposed development projects subject to this chapter which do not require original discretionary review by the Planning Commission, Zoning Adjustments Board and/or City Council, the mitigation and/or fees required by this chapter shall be imposed administratively by the City as a condition of the issuance and/or granting of the permit, approval and/or entitlement otherwise required for any such development project. The amount of such mitigation and/or fees to be imposed shall be determined by the City.

C. Where the mitigation and/or fees required pursuant to this chapter are to be imposed administratively by the City, and where the applicant seeks to establish an exception pursuant to Section 22.20.070 or 22.20.080, the City shall have the authority to limit and/or reduce the amount of mitigation and/or fees up to fifty percent of the amount which otherwise would be required by the chapter. The amount of mitigation and/or fees to be
imposed by the City shall not be limited or reduced below fifty percent of the amount which otherwise would be required by this chapter without the approval of the Zoning Adjustments Board or City Council.

D. Where the mitigation and/or fees required pursuant to this chapter are to be imposed by the Planning Commission, Zoning Adjustments Board and/or City Council, and where the applicant seeks to establish an exception pursuant to Section 22.20.070 or 22.20.080, the Planning Commission, Zoning Adjustments Board and/or City Council shall have the authority either to waive, or, alternatively, to limit and/or reduce, the amount of mitigation and/or fees which otherwise would be required by this chapter.

E. The City shall adopt written findings which explain both the rationale for the imposition of any fee and/or mitigation, including the amount thereof, and any reduction or exception granted including the findings required by Section 22.20.070 or Section 22.20.080. Such findings shall be provided to the applicant at the time the permit or entitlement is issued. (Ord. 6179-NS § 9, 1993)

22.20.100 Appeal.

A. The applicant or any development project aggrieved by any administrative decision of the City in imposing any mitigation and/or fee pursuant to this chapter may appeal such decision to the Zoning Adjustments Board in the same manner as provided in Section 20.4 of the City’s zoning ordinance (No. 3018-N.S.).

B. The applicant of any development project aggrieved by any decision made by the Planning Commission or Zoning Adjustments Board pursuant to this chapter may appeal such decision to the City Council pursuant to the appeal procedure, if any, governing appeal of decisions made concerning the underlying entitlement such as the use permit or subdivision map. (Ord. 6179-NS § 10, 1993)

22.20.110 Mitigation rationale.

The City Manager shall establish, maintain on file and use standard formulae, rationales and calculations by which the amount of mitigation and/or fees required to offset or reduce certain impacts may be determined. Such formulae and calculations shall be provided to any person upon request. (Ord. 6179-NS § 11, 1993)
Chapter 23B.34
Green Pathway

Sections:

23B.34.010 Applicability

23B.34.020 Purpose

23B.34.030 Eligibility Determination--Procedure for Identifying Potential Impacts of Green Pathway Projects on Historical Resources

23B.34.040 Voluntary Green Pathway Election--Application

23B.34.050 Requirements Applicable to All Green Pathway Projects

23B.34.060 Additional Green Pathway Requirements Applicable to Large Buildings and Hotels

23B.34.070 Development Standards for All Green Pathway Projects

23B.34.080 Streamlined Entitlement Process for Projects Involving Only Buildings at or Below 75 Feet in Height

23B.34.090 Streamlined Entitlement Process for Projects Involving Buildings Over 75 Feet in Height

23B.34.100 Tolling

23B.34.110 Compliance

23B.34.120 City Manager Authority to Issue Regulations

23B.34.010 Applicability

This Chapter applies only to development projects in the C-DMU district that:

A. Do not propose alteration or demolition of any property that is an historical resource as defined by 14 California Code of Regulations 15064.5; and

B. Will not have a significant adverse impact on any adjacent historical resource as defined by 14 California Code of Regulations 15064.5. (Ord. 7230-NS § 1 (part), 2012)

23B.34.020 Purpose

The purpose of this Chapter is to implement the “Green Pathway” provisions of Measure R (2010) by providing a voluntary streamlined permit process for buildings that exceed the Green Building requirements applicable in the C-DMU district and confer extraordinary public benefits that could not otherwise be obtained, as specified in this Chapter. More specifically, this Chapter establishes standards and requirements to provide greater clarity
regarding the City’s expectations for projects eligible for approval under these provisions and to ensure they will be designed and developed consistent with the Downtown Area Plan. (Ord. 7230-NS § 1 (part), 2012)

23B.34.030 Eligibility Determination--Procedure for Identifying Potential Impacts of Green Pathway Projects on Historical Resources

In order to determine whether a project is eligible for processing under this Chapter, each applicant shall submit to the City a Request for Determination (“RFD”). The RFD process set forth in this Section shall apply to development projects that may be eligible for Green Pathway processing pursuant to this Chapter notwithstanding anything to the contrary in Chapter 3.24.

A. A property owner or authorized agent thereof shall request the Landmarks Preservation Commission (“LPC”) to determine whether the subject property, as well as each adjacent property, is an historical resource under 14 California Code of Regulations 15064.5, by submitting a RFD. Potential historical resources include, but are not limited to, properties identified in any of the following sources:

1. Downtown Plan and EIR (Adopted 1990);

2. State Historic Preservation Office California Historical Resources Information System Historical Resources Inventory for Alameda County, City of Berkeley (Most Recent); or


B. Processing of RFDs.

1. A RFD shall not be accepted unless it is accompanied by proof that the applicant has posted a conspicuous notice on the subject property in a location that is readily visible from the street on which the structure or site has its major frontage. Such notice shall be in a form specified by the Zoning Officer.

2. Upon receiving a RFD, the City shall contract with an independent consultant from a list of qualified consultants approved by the LPC to prepare an historic resource assessment. The costs of the assessment shall be borne by the applicant. Alternatively, the applicant for a RFD may submit its own historic resource assessment, which shall then be subject to peer review by the City’s consultant at the applicant’s expense. If a property that is the subject of the RFD is not
identified on any of the lists in Subdivision (A), the applicant’s assessment may consist of a
statement of why the applicant believes the property does not include an historical resource.

3. A RFD shall be deemed complete upon completion of the City consultants’ historic resource
assessment or peer review.

4. The LPC shall commence its consideration of whether to designate a property that is the
subject of a RFD at a public hearing at the first regular meeting that occurs no less than 21 days
after the RFD is complete, and shall take final action no later than 90 days after it is complete.
Notice of the public hearing shall be provided as set forth in Section 3.24.140.

5. Any of the timelines specified in this Section may be extended at the request of the
applicant. Failure to act within any of the timelines set forth in this Section, as they may be
extended, shall constitute a decision to take no action to designate.

C. If a property that is the subject of a RFD is not designated within the time limitations set forth in this
Section, Chapter 3.24 shall not apply to that property unless and until the earliest of any of the following occurs:

1. The expiration of two (2) years from the date of any final action not to designate the
property; or

2. If an application under this Chapter is submitted within that period, (1) the application is
withdrawn or denied; or (2) any entitlement expires, is cancelled or revoked, or for any other
reason ceases to have effect.

D. Decisions by the Landmarks Preservation Commission under this Section shall be subject to appeal as set
forth in Section 3.24.300, and certification as set forth in Section 3.24.190.

E. If a subject property is determined to be an historical resource as defined by 14 California Code of
Regulations 15064.5, it shall not be processed as a Green Pathway Project under this Chapter. (Ord. 7230-NS
§ 1 (part), 2012)

23B.34.040 Voluntary Green Pathway Election--Application

A. The Green Pathway authorized by this Chapter is a voluntary development option under which applicants
for development projects in the C-DMU district may waive certain rights and agree to certain obligations the
City could not otherwise impose in return for certain processing benefits.
B. An application for processing pursuant to the Green Pathway shall include the information otherwise required by this Title for the entitlement sought, as well as:

1. The applicant’s commitment to enter into binding agreements to satisfy all applicable Green Pathway requirements set forth in this Chapter if the application is approved; and

2. Proof that the Landmarks Preservation Commission has not taken any action under Section 23B.34.030 to designate the subject property as a structure of merit or landmark under Chapter 3.24.

C. Except as expressly specified in this Chapter, the requirements of this Chapter are in addition to, and do not alter or replace any other requirements or standards of this Title.

D. Except as expressly specified in this Chapter, the requirements of this Chapter are in addition to, and do not alter or replace any other requirements or standards of Chapter 3.24, Landmarks Preservation Commission. (Ord. 7230-NS § 1 (part), 2012)

23B.34.050 Requirements Applicable to All Green Pathway Projects

All projects subject to the Green Pathway shall be subject to the following requirements:

A. In addition to any other applicable affordable housing mitigation fee or requirement, at least twenty percent (20%) of the total units in any proposed multi-unit rental development shall be rented to very low income households whose annual income does not exceed 50 percent (50%) of the annual median income for Alameda County adjusted for household size based upon income levels published by the U.S. Department of Housing and Urban Development. Rents for these units shall be set at prices affordable to very low income households, as defined by Section 50053, of the California Health and Safety Code for the life of the project. As an alternative, an applicant may pay an in lieu fee to the Housing Trust Fund as established by Council.

B. The applicant shall waive, in writing, any rights under State Density Bonus Law, Section 65915 of California Government Code.

C. The applicant shall sign an agreement that no less than thirty percent (30%) of a project’s construction workers shall be Berkeley residents.

1. If insufficient Berkeley residents are available to fulfill the 30% local hire requirement, then the next tier of residents shall come from the East Bay Green Corridor (which includes the cities
of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Hayward, Richmond, Oakland, and San Leandro).

2. If insufficient residents are available from the Green Corridor to fulfill the 30% local hire requirement, then residents of Alameda County will be utilized to fulfill the local hire requirements.

3. An applicant who agrees to require employment of Berkeley residents on another project the applicant is building or has approval to construct in Berkeley may count such employment toward the 30% local hire requirement by providing the same documentation the City requires to demonstrate compliance with paragraphs 1 and 2 of this subdivision.

D. Uses shall comply with the requirements and limitations of Sections 23E.68.030 and 23E.68.060. (Ord. 7230-NS § 1 (part), 2012)

23B.34.060 Additional Green Pathway Requirements Applicable to Large Buildings and Hotels

In addition to the requirements of Section 23B.34.050, any Green Pathway project that includes either a hotel, a building over 75 feet in height, or a building with more than 100 units of housing, shall be subject to the following requirements:

A. All construction workers shall be paid state prevailing wage as established by the California Department of Industrial Relations.

B. To the extent that a sufficient number of qualified apprentices are reasonably available, no less than 16% of the construction workers shall be apprentices from a State Certified Apprenticeship program with a record of graduating apprentices.

C. Employees in hotels with a height over 75 feet shall be paid prevailing wages as established by the Department of Industrial Relations for hotel employees. If the Department of Industrial Relations does not establish prevailing wages for hotel employees, such employees shall be paid wages consistent with area mean wages per occupational category.

D. As a condition of approval for any Green Pathway subject to the requirements of this Section, the owner shall enter into a written agreement that shall be binding on all successors in interest. (Ord. 7230-NS § 1 (part), 2012)
23B.34.070 Development Standards for All Green Pathway Projects

Green Pathway projects shall comply with the applicable development standards in Section 23E.68.070 and the following additional requirements:

A. Building Setbacks Within View Corridors: To minimize interference with significant views, buildings that are 75 feet in height or less that are located on a corner lot at any intersection with University Avenue, Center Street, or Shattuck Avenue must include upper story setbacks as follows: any portion of a building between 45 feet and 75 feet must be set back from property lines abutting the street by at least one (1) foot for every one (1) foot by which the height exceeds 45 feet.

B. Street Wall Facade: Notwithstanding the Downtown Design Guidelines, the street wall facade shall be architecturally modulated by volumes that are 50 feet in width or less:

1. Smaller modulations may be incorporated within larger volumes;

2. Volumes along the street wall must be defined by structural bays and/or substantial reveals or offsets in the wall plane, and by changes in the rhythmic pattern of one (1) or more of the following features:
   a. Window openings, oriel windows, or balconies;
   b. Awnings, canopies, or entrances;
   c. Arcades, columns, or pilasters;
   d. Materials and color; or
   e. Other architectural features.

C. Shadow Analysis Required for Buildings With Heights Between 60 and 75 Feet: Applications shall include diagrams showing:

1. The extent of shading on public sidewalks and open spaces within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet in height that complies with all applicable setback requirements;
2. Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.

D. Height Restrictions on Green Pathway Buildings: Consistent with the height standards of Measure R (adopted November 2, 2010), Section 4.B., as required by Section 3, Paragraph 12, Green Pathway Buildings of exceptional height are restricted as follows:

1. Two mixed-use buildings and one hotel/conference center in the Core, no more than 180 feet in height;

2. Two buildings, up to 120 feet in height in the Core or Outer Core.

E. To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR. (Ord. 7230-NS § 1 (part), 2012)

23B.34.080 Streamlined Entitlement Process for Projects Involving Only Buildings at or Below 75 Feet in Height

A. Notwithstanding anything to the contrary in this Title, Green Pathway projects that do not involve either hotels, buildings over 75 feet, or buildings with more than 100 units of housing, shall be approved as a matter of right with a Zoning Certificate if they comply with the applicable zoning requirements, standards and requirements in this Chapter and the Downtown Design Guidelines. Such projects shall be subject to design review under subdivision B and Chapters 23E.08 and 23E.12.

B. If a proposed Green Pathway project is adjacent to a property that has been determined to be an historic resource under Section 23B.34.030, the application for a Green Pathway project shall include an analysis demonstrating how the project meets the Secretary of the Interior’s Standards for the Treatment of Historic Properties, including guidelines for the treatment of cultural landscapes with respect to such adjacent property.

1. After determining that the application is complete, the Zoning Officer shall forward the analyses described in Subdivisions A and B of Section 23B.34.030 to the Secretary of the LPC to place on the agenda for the next regular meeting of the LPC that occurs no less than 21 days thereafter. The LPC shall then have 90 days in which to evaluate the submission and provide any comments to the Design Review Committee.
2. The Design Review Committee shall determine whether a project conforms to the Secretary of the Interior’s Standards for the Treatment of Historic Properties and the associated guidelines, including the standards and guidelines for the treatment of cultural landscapes, with respect to adjacent historical resources. A project that clearly conforms to those standards and guidelines shall be considered to not have a significant impact on the historical resource. If the Design Review Committee determines that the proposed project would have a significant adverse impact on any adjacent historical resource and the project is not modified to avoid that impact, it shall not be processed as a Green Pathway Project.

C. Notwithstanding Sections 23E.12.040 and 23E.12.050, the Design Review Committee shall determine whether the project conforms to the Downtown Design Guidelines and shall take final action on the project no later than 90 days from the date the application for a Green Pathway project, including for design review, is complete. When determining whether a project subject to review under this section conforms to the Downtown Design Guidelines, the Design Review Committee shall treat applicable guidelines as standards. The decision of the Design Review Committee regarding whether the project conforms to the Guidelines may be appealed directly to the City Council by filing an appeal stating the reasons for the appeal, along with the required fee, with the City Clerk within fourteen (14) days of the date of the Committee’s action. Design Review appeals shall be limited to design issues. (Ord. 7230-NS § 1 (part), 2012)

23B.34.090 Streamlined Entitlement Process For Projects Involving Buildings Over 75 Feet In Height

Notwithstanding anything to the contrary in this Title, the Zoning Adjustments Board shall take final action on a Green Pathway project over 75 feet in height or any other project not processed under 23B.34.080 no later than 210 days after the application is complete, provided that this time limit shall be extended as necessary to comply with the California Environmental Quality Act. Such projects shall receive priority status in order to meet the review milestones set forth in this Section. (Ord. 7230-NS § 1 (part), 2012)

23B.34.100 Tolling

Timelines under this Chapter shall be tolled during any proceedings pursuant to Chapter 3.24, relating to a Green Pathway project. (Ord. 7230-NS § 1 (part), 2012)

23B.34.110 Compliance

The applicable public benefit requirements of this Chapter shall be included as conditions of approval and in a binding agreement for all Green Pathway projects. (Ord. 7230-NS § 1 (part), 2012)
23B.34.120 City Manager Authority to Issue Regulations

The City Manager or his/her designee may promulgate rules and regulations pertaining to this Chapter, including, but not limited to, setting and administering gross rents and sale prices for below-market-rate units. These rules and regulations may also specify and require guarantees, including recorded agreements and other appropriate measures necessary or convenient to assure that required below-market-rate units are provided to and occupied by very low income households, and that other public benefits set forth in this Chapter are secured. (Ord. 7230-NS § 1 (part), 2012)